

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Case No. 3:19-cv-3304

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INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS LOCAL 98 PENSION FUND, on behalf of
itself and all others similarly situated,
Plaintiffs,

vs.

DELOITTE & TOUCHE LLP, DELOITTE LLP,
Defendants.

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REMOTE VIDEOTAPED DEPOSITION OF TODD NEILSON

Friday, September 10, 2021

Reported by:

Amy A. Rivera, CSR, RPR, CLR

JOB NO. 198395

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September 10, 2021
10:05 a.m.

REMOTE videotaped deposition of
TODD NEILSON held pursuant to Notice, before Amy
A. Rivera, Certified Shorthand Reporter,
Registered Professional Reporter, Certified
LiveNote Reporter, and a Notary Public of the
States of New York, New Jersey and Delaware.

R E M O T E A P P E A R A N C E S :

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BY: JED SCHWARTZ, ESQ.

KINGDAR PRUSSIEN, ESQ.

A L S O P R E S E N T :

Chassity Bobbitt - Milbank

Matthew Chin-Quee, Legal Video Specialist

Eli Wykell

1 TODD NEILSON

2 VIDEOGRAPHER: We're now on the
3 record.

4 This is the start of Tape No. 1 of the
5 videotaped deposition of Todd Neilson in the
6 matter International Brotherhood of
7 Electrical Workers Local 98, et al., v.
8 Deloitte & Touche LLP, et al., in the United
9 States District Court for the District of
10 South Carolina, No. 3:19-cv-3304.

11 All parties have agreed to appear
12 remotely on September 10, 2021, at
13 approximately 10:05 a.m.

14 My name is Matthew Chin-Quee from TSG
15 Reporting, and I'm the legal video
16 specialist.

17 The court reporter is Amy Rivera in
18 association with TSG Reporting.

19 Will counsel please introduce
20 yourself.

21 MR. SCHWARTZ: I think we noted all
22 appearances on the record.

23 VIDEOGRAPHER: Right. All appearances
24 are noted on the record.

25 Will the court reporter please swear

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in the witness.

T O D D N E I L S O N, having been duly sworn
by the Notary Public, testified as follows:

MR. SCHWARTZ: Thank you.

EXAMINATION

BY MR. SCHWARTZ:

Q. Mr. Neilson, thank you for your
patience with the technology issues this morning.

Mr. Neilson, have you been deposed
before?

A. Never.

Q. Okay. So this is going to proceed in
a series of questions and answers. I will be
asking questions. You'll be giving answers. And
it's very important that, particularly given the
platform in which we're doing this, that you let
me finish my question even if you know what I'm
going to ask and then provide your answer, and I
will do my best to let you finish your answer
before I move on.

Do you understand?

A. Yes. Thank you.

Q. And as you've just done, it's very
important that you have to answer orally because

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the court reporter can't pick up a shake or nod of the head.

Do you understand?

A. Yes.

Q. If you need clarification on a question or if you don't understand a question, please feel free to let me know that. If you don't, I'll assume you understood the question.

Do you understand?

A. Yes. Thank you.

Q. And your counsel can confirm this, from time to time, your counsel may object to my questions, but unless your counsel instructs you not to answer, you're still required to answer my questions.

Do you understand that?

A. Yes.

Q. We will probably be showing some documents to you on the screen as we proceed today. There are likely to be multipage documents, and we will be giving you the ability to flip through them so that you have the ability to take whatever time you need to review a document before I ask you questions about it.

1 TODD NEILSON

2 Do you understand?

3 A. Yes. Thank you.

4 Q. You also you should feel free to ask
5 for a break whenever you need it. I'll try to
6 remind all of us after we've been going for about
7 an hour, but if you need a break before then, you
8 let me know.

9 Do you understand?

10 A. I will, yes.

11 Q. Is there any reason that you're aware
12 of that you can't give truthful and accurate
13 testimony today?

14 A. No.

15 Q. Mr. Neilson, I'll start with some
16 background.

17 Who is your current employer?

18 A. IBEW Local Union 98.

19 Q. And how long have you -- well,
20 withdrawn.

21 What is your current position with
22 IBEW Local Union 98?

23 A. My job title is business
24 representative, and I am also a member of Local
25 Union 98's executive board. That's an elected

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position, unpaid.

Q. Have you -- if I referred to IBEW Local Union 98 as "the Union," will you understand what I mean?

A. Yes.

Q. Have you ever been treasurer of the Union?

A. Yes.

Q. When were you treasurer?

A. I was appointed to treasurer in the year 2003. There was a vacancy. Someone had left. Then I was asked to fill that vacancy, and I held that position up until December of 2020, when I was asked to fill an additional vacancy as an executive board member.

Q. And who replaced you as treasurer of the Union?

A. A gentleman named Michael Magee.

Q. So you currently hold two positions with the Union, business representative and executive board member?

A. Yes.

Q. Is there any other title besides executive board member or is it just executive

TODD NEILSON

board member?

A. No, that's all.

Q. What are your responsibilities as a --
withdrawn.

How long have you been a business
representative for the Union?

A. I became a business representative in
June of 2016.

Q. What are your responsibilities
generally speaking as business representative for
the Union?

A. As a business representative, I am
assigned to a geographical area to oversee the
jobs going in there -- going on in that area and
to make sure that upcoming projects, as they come
to fruition, that we have a significant amount of
our signatory contractor submit on that project --
submit pricing on that project and oversee that to
make sure that all of the Union rules are enforced
and protect the rights of our members and the
safety aspect of the job site so that our folks on
the job sites are represented and that their
safety and their issues -- you know, their
personal issues are protected.

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Q. Generally speaking, what are your responsibilities as an executive board member?

A. As an executive board member, we review all of the standing and non-standing bills and approvals in between meetings in order to pay the bills and make sure that all of the -- the funds and as well as the members have -- are enforced and just to make sure that the day-to-day stuff goes through as it applies to the funds and making sure that all the bills get paid in a timely fashion.

Q. How many people are on the executive board?

A. There are seven. President, vice-president have seats on the executive board, as well as five executive board members.

Q. Who is the president?

A. Brian Burrows.

Q. Who's the vice-president?

A. Timothy Browne.

Q. And are all of the other executive board members employees of the Union?

A. Yes. In some way, shape, or form, they're all union members.

TODD NEILSON

Q. Does the Union itself employ individuals?

MS. POSNER: Objection.

Jed, which one of the 30(b)(6) topics are you referring to here? 'Cause it's not about his employment and it's not about the lead plaintiff here.

MR. SCHWARTZ: Well, I'm just trying to get some background on the witness. I think it's totally within the ability of me to get an understanding of the witness' background and responsibilities at the Union.

MS. POSNER: You certainly can ask him about his background and responsibilities, but you're asking about other personnel at the Union and what their responsibilities are.

MR. SCHWARTZ: Well, that's not what I was asking. I asked: Does the Union itself employ individuals?

MS. POSNER: Right. But, again --

MR. SCHWARTZ: We're talking about -- the witness has said he holds a position

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with the Union. I'm trying to understand what his position is.

Let me rephrase that.

BY MR. SCHWARTZ:

Q. Mr. Neilson, are you an employee of the Union?

A. Yes. I am an employed -- I am appointed -- appointed business agent by the business manager, as he -- as he deems necessary, yes, but at-will.

Q. And so you are paid by the Union, correct?

A. Correct.

Q. What were your responsibilities as treasurer of the Union when you held that position?

A. When I was treasurer, the treasurer position has little to -- it was -- it's essentially a dual signature on the checks.

I didn't approve any expenditures or anything. Those are done at the executive board level. A treasurer is merely a secondary signature on any kind of financial documents and the checks.

TODD NEILSON

Q. You said that you were currently an at-will employee at the Union. Is that correct?

A. Yes.

Q. And who can make the decision to fire you as an employee?

A. The business manager.

Q. And who is that?

A. John J. Dougherty.

Q. Mr. Neilson, are you familiar with something called the "International Brotherhood of Electrical Workers Local 98 Pension Fund"?

A. I am.

Q. And if I refer to that as "the Fund," you'll know what I mean?

A. Yes.

Q. Do you hold any positions at the Fund?

A. I am Union trustee on the Fund.

Q. How many trustees are there at the Fund?

A. There are eight available positions as trustees. There are currently seven trustees, three representing the Union and four representing management, with one open seat on the Union end that we had a retirement in the last couple of

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years and it just hasn't been fulfilled yet.

Q. Does the Union -- sorry -- withdrawn.

Does the Fund have any employees?

A. No.

Q. Are there any other managers of the Fund besides the Board of Trustees?

A. We have Fund managers, if that's your question.

Q. Would those be outside investment advisers?

A. We have outside investment advisers. We also have a Fund administrator, which is Frank M. Vaccaro & Associates, and they're a Fund administrator for most of our funds.

Q. And what function does the Fund administrator perform?

A. When our contractors send in the money for the benefits, they disburse the money into the appropriate funds and oversee it, track it, and everything else.

Q. How did you come to be appointed as a trustee of the Fund?

A. They had asked me. They had an opening, and they had asked me if I were to be

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interested in fulfilling the vacancy on -- on the trust.

Q. And who's the "they" that asked you?

A. They being -- well, Brian Burrows is the chairman of all funds. By virtue of this position as treasurer of the Fund -- of the -- as president -- excuse me -- of the Union, he oversees all of the funds, and he and I guess the executive board decide about filling vacancies on all of our committees, which is essentially what this is. It's a committee appointment.

Q. And when you say, "executive board," you mean executive board of the Union?

A. Yes.

Q. And I think you said there is somebody named Mr. Dougherty. Is that correct?

A. He's not on the executive board. He's the business manager.

Q. Okay. All right. Which entity --

MR. SCHWARTZ: Can we bring up Tab 1?

(Exhibit 15, Amended Notice of Deposition of the Fund, was marked for identification at this time.)

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BY MR. SCHWARTZ:

Q. Mr. Neilson, this is -- we're going to be bringing up some documents on the screen as we go today, as I mentioned before, and marking them with exhibit numbers. And you'll have -- you should have the ability to scroll through and zoom in because they can be small.

We've marked as Exhibit 15, a document that's titled "Amended Notice of Deposition of the Fund."

Have you seen this before?

A. Yes.

MR. SCHWARTZ: I'm not sure if somebody just went off of mute. I'm going to want -- that's better. Thank you.

Q. And, Mr. Neilson, if you page through, you'll see there is a section that's labeled "Topics."

Let me know when you've reached that.

A. Yes.

Q. And then -- actually, it's, I think, two pages in, there's a section labeled "Topics" that begins 1, and it goes on for several pages.

A. Yes.

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Q. Take whatever time you need to review the topics. They go 1 through 34.

And my question is: Are you prepared to testify as to each of these topics today?

MS. POSNER: Objection as to the -- pursuant to the objections and the pending protective order with regard to certain of the topics in this document.

MR. SCHWARTZ: I'm not really sure what that means. I don't understand. There have been objections, and there's a protective order, but I'm asking the witness what he's prepared to testify on.

MS. POSNER: Right. And I'm saying, he's prepared to testify subject to our objections and the pending motion for a protective order.

MR. SCHWARTZ: Well, I'd just like to hear from the witness what he's prepared to testify on.

A. I am.

Q. Mr. Neilson, did you prepare for your deposition today?

A. Yes.

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Q. How did you prepare for today's deposition?

A. I went through with my attorney just to -- being as I've never done one of these before, I didn't know what to expect -- just to try to calm me down and make sure that I was comfortable -- as comfortable as possibility.

Q. Did you review any documents in preparing for today's deposition?

A. Yes.

Q. Approximately how many documents?

A. A lot. I don't know.

Q. Did any --

A. It's a pretty thick binder.

Q. Sorry. Go ahead.

A. It's a pretty thick binder.

Q. Did any of those documents refresh your recollection about the things they related to?

A. Yes.

Q. Do you recall which documents specifically refreshed your recollection about the things to which they related?

A. No, not that stands out to me over

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another.

Q. Did you meet with anyone else other than counsel in preparing for your deposition today?

A. No, just counsel and Molly, her assistant.

Q. Did you speak with anyone other than counsel in preparing for your deposition today?

A. No.

Q. So you didn't make any attempt to speak to anyone at the Fund or the Union about any of the topics listed in Exhibit 15?

A. No.

Q. About how long did you spend with counsel preparing for your deposition today?

A. Several hours.

Q. Was it in the course of several meetings or just one meeting?

A. One continuous meeting yesterday and then prior.

Q. So the meeting yesterday was several hours. Is that right?

A. Yes.

Q. And then you said you had prior

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meetings with counsel. Is that correct?

A. Yes, just to familiarize myself with the case.

Q. And when did that prior meeting occur?

A. I don't know off the top of my head. I don't have an exact date. There's been phone calls -- numerous phone calls over the course of the last few months.

Q. And were those phone calls specifically in preparation for the deposition today or for other reasons?

A. I guess everything was leading up to today. It was just to familiarize myself and make sure I had a good understanding of what was going on.

Q. Were there any topics that you were not familiar with that you had to educate yourself on for today's deposition?

A. A lot of the stuff, actually, you know, understanding what happened here, being that I'm an electrician and not an attorney or an investment manager, so I needed to get myself up to speed as to what the issue was at hand.

Q. You see Topic 1 says, "The claims

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asserted and allegations in the complaint"?

A. Yes.

Q. Well, before we get to that, do you understand that you are testifying today as the corporate representative of the Fund?

A. I do.

Q. And what do you understand that to mean?

A. I understand that to mean that whatever this -- that it's my duty and fiduciary responsibility to the Fund to -- to oversee this case, make sure that the attorneys are doing what they need to do, and to try to get us a most favorable settlement for all the class holders in this case.

Q. Do you understand that as the corporate representative here today, I'm entitled to understand the knowledge and information of the Fund and not just your personal knowledge about this case?

A. Sure. I get that.

Q. And you're prepared to testify as to the knowledge of the Fund on the topics in Exhibit 15. Is that correct?

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A. I am.

Q. Topic 1 says, "The claims asserted and allegations in the complaint."

Do you see that?

A. I do.

Q. What are the claims that have been asserted in the complaint?

A. The claims that have been asserted is that Deloitte & Touche as the auditors for SCANA and, you know, their negligence in reporting to the -- the class holders, the stakeholders, the people that have stock, that they didn't divulge -- that they didn't do their due diligence in overseeing it as the auditors of that project and their funds, seeing that they weren't going to be able to deliver as promised for their investors.

Q. That who wasn't going to be able to deliver as promised?

A. That the SCANA project wasn't going to be done in time to successfully get over a billion dollars' worth of incentives to have that project done on time in tax credits.

Q. What's your -- what's the Fund's

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understanding of what Deloitte is accused of doing wrong?

A. Could you rephrase that question? I'm not sure I understand it.

Q. You're testifying on behalf of the Fund, correct?

A. Yes.

Q. So what is the Fund's understanding as to what Deloitte has done wrong?

MS. POSNER: Objection, asked and answered.

You can answer.

A. That, as a result of their negligence, that that investment lost money because they didn't report it back to this -- stockholders.

Q. Are you aware that the Fund has accused the defendants here of committing a fraud?

A. Yes.

Q. And so what's the basis for the Fund's belief that Deloitte committed a fraud?

MS. POSNER: Objection, asked and answered and calls for a legal conclusion.

You can answer, if you can.

A. As auditors, they should have been

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able to foresee that this project wasn't going to be able to be completed on time in order to achieve those 1-point-some billion dollars in tax credits, which is what they were selling to the stockholders. They should have been able to foresee that that wasn't going to -- that time frame wasn't going to be met.

Q. What's the Fund's basis for its belief that, as auditors, the defendant should have been able to foresee that the project wasn't going to be completed on time?

MS. POSNER: Objection, asks for a legal conclusion.

If you know the answer, you can.

A. If they were doing their due diligence, they should have been able to see that the project wasn't progressing in a timely fashion in order to meet those deadlines, and that, first and foremost, is fraudulent by not reporting it to the stakeholders.

Q. What's the basis for the Fund's belief that if Deloitte had been doing its due diligence, it would have been able to see that the project wasn't progressing in a timely fashion?

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MS. POSNER: Objection. Again, calls for a legal conclusion. It's beyond the scope.

A. I -- I thought I kind of answered that question already.

Q. No, I don't think you did, so --

MS. POSNER: He's answered the question four separate times, and you're essentially asking him a contention interrogatory.

If you want to keep asking it, he can keep giving you the same answer, but I think you've gotten the answer.

MR. SCHWARTZ: I haven't, and the record's clear you didn't object on an asked-and-answered basis, so I'll ask the question again.

Q. What is the basis for the Fund's belief that if Deloitte had been doing its due diligence, it would have been able to see that the project wasn't progressing in a timely fashion?

MS. POSNER: Again, asked and answered, calls for a legal conclusion and is an improper contention interrogatory

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prior to the completion of discovery.

But if you can answer again, feel free.

THE WITNESS: I believe I've already answered that, Laura.

BY MR. SCHWARTZ:

Q. What was that answer?

A. That they should have been able to foresee that the -- that the building wasn't getting completed and wouldn't be complete in that same timely fashion in order to achieve those -- there was \$1.2 billion worth of tax incentives to have this project done.

I think anybody that walked by a project could see if the building was moving forward, stalled. Anyone with limited to no construction experience, walk a site of a building, could see where they're at in the construction stages, whether or not it was done or not, whether it be a building or the nuclear reactors, which is what this case did in SCANA.

Q. Would you include yourself in that group of anyone who could walk by a construction site could judge the progress?

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2 MS. POSNER: Objection.

3 Are you asking him as a representative
4 of the Fund what the Fund could do or him
5 personally?

6 BY MR. SCHWARTZ:

7 Q. In any capacity, do you include
8 yourself as one of those people?

9 MS. POSNER: Objection.

10 The deposition here is of the Fund.
11 So if you want to know about the Fund's
12 knowledge is, you're free to ask that.

13 Q. Well, you're an employee -- you're a
14 trustee of the Fund, right?

15 A. I am.

16 Q. So do you think that if the Fund had
17 sent you down to the construction site in South
18 Carolina, you would have been able to accurately
19 judge the progress of the nuclear site?

20 MS. POSNER: Objection, beyond the
21 scope.

22 Q. You can answer.

23 A. Just by walking by it, no. But
24 reviewing their financials and seeing what
25 everything else is in the grand scheme of things,

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probably, yes.

But I don't know for sure, because it's rhetorical, the question you're asking me. I didn't walk the site, so ...

Q. Right. But you said anybody could do it, and I'm just trying to figure out if you actually believe that or not.

You actually believe that anybody could walk to the site and judge accurately the progress of two nuclear power plant construction projects?

MS. POSNER: Objection, misstates his testimony.

Q. You can answer.

A. If that's what their responsibility is as an employee of Deloitte, to know where they're at, if they're the auditor, they should be educated into what is going on with that project before reporting it to its stockholders.

Q. But is it the Fund's testimony that Deloitte had the obligation to monitor the schedule for the construction project?

MS. POSNER: Objection.

If you can answer.

1 TODD NEILSON

2 It calls for a legal conclusion.

3 A. I don't know what their responsibility
4 was, but as the auditor, I think that they should
5 have done their due diligence a little bit better
6 reporting it to the stakeholders.

7 Q. Okay. What's your basis for that
8 statement?

9 A. You asked me my opinion, and I gave it
10 to you.

11 MS. POSNER: Hold on. Hold on,
12 Mr. Neilson.

13 Objection, calls for a legal
14 conclusion.

15 Q. What's your basis for your -- the
16 Fund's belief that Deloitte didn't do its due
17 diligence?

18 MS. POSNER: Objection, calls for a
19 legal conclusion.

20 A. Asked and answered, I believe, several
21 times.

22 Q. Well, your counsel can make the
23 objections. You're required to answer the
24 question.

25 So what is your basis for your

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testimony on behalf of the Fund that Deloitte did not do its due diligence?

MS. POSNER: Objection, calls for a legal conclusion and has been asked and answered at least a dozen times at this point.

If you can answer again, feel free.

A. I believe I've already answered that numerous times.

Q. I don't think you have. So why don't you explain to me where in your prior testimony you answered your basis for your belief that Deloitte has not done its due diligence?

MS. POSNER: Objection, calls for a legal conclusion, asked and answered multiple times now.

Mr. Neilson, if you want to repeat your answer again, this will be the last time.

A. As auditors of the project, they should have done their due diligence and not made false or -- excuse me -- they should have done their due diligence in reporting to the stakeholders where this project was, and knowing

TODD NEILSON

that it couldn't be completed on time, as stated, in order to get that \$1.2 billion worth of tax credits, in my opinion, they dropped the ball and didn't do their due diligence.

Q. Right. It's that last part that I'm asking about.

What's your basis for your testimony that Deloitte didn't do its due diligence?

MS. POSNER: Objection, asked and answered, calls for a legal conclusion, and seeks information that is available through discovery that has not been completed yet.

Jed, move it along.

MR. SCHWARTZ: He hasn't answered the question.

He's said several times now, on behalf of the Fund, that it's the Fund's view that Deloitte didn't do its due diligence. It's perfectly within my rights to understand the basis for that testimony.

And if the witness doesn't have a factual basis for that testimony, he can say so, and that's fine, and we can move on.

MS. POSNER: He has provided to you

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2 his answer on multiple occasions. You don't
3 like the answer, that's fine, but you don't
4 get to sit here and harass him and ask the
5 same question over and over and over again.

6 MR. SCHWARTZ: I haven't done that.

7 BY MR. SCHWARTZ:

8 Q. Mr. Neilson, what facts are you
9 relying on when you testify under oath that
10 Deloitte didn't do its due diligence?

11 MS. POSNER: Objection, calls for
12 attorney-client privileged communications
13 now, asked and answered, and is an improper
14 contention interrogatory prior to the
15 completion of discovery.

16 MR. SCHWARTZ: Are you instructing him
17 not to answer?

18 MS. POSNER: I'm instructing him not
19 to convey any information provided to him
20 through counsel. If he knows anything
21 further than what he's already testified to,
22 he's welcome to provide that.

23 THE WITNESS: I believe I've already
24 gave him my answer several times to that
25 question.

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Q. What facts am I forgetting -- what facts did you identify in response to -- that would answer that question?

MS. POSNER: Same objection.

If you have anything further to add, feel free. If not, you can say so as well.

A. I have nothing further to add to that.

Q. Well, I want to make sure I understand. When I go back through the transcript, if you've pointed to -- if you've identified a fact that supports the Fund's belief that Deloitte didn't do its due diligence, I want to understand what that fact is.

I don't think you have, so if there's a fact that supports that belief, I want to know what it is.

Can you point me to the fact that you've identified?

MS. POSNER: Same objection.

Jed, move on.

MR. SCHWARTZ: I will as soon as he answers the question.

MS. POSNER: He's literally answered the question to the best of his ability at

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least 12 times now.

Move on.

BY MR. SCHWARTZ:

Q. Mr. Neilson, will you agree with me that you have not pointed to a single fact to support the Fund's opinion that Deloitte didn't do its due diligence?

MS. POSNER: Objection, misstates his testimony.

Q. You can answer.

A. I believe I have. I've given you my answers.

Q. Okay. So what fact did you point to that I'm just not remembering?

MS. POSNER: Objection. Same objections.

Please, move on. You are harassing the witness.

Q. You can answer.

MR. SCHWARTZ: This shouldn't be difficult. I want to know what the facts are.

If he has no facts, say he has no facts, but I want to know what facts are.

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Q. I'm entitled to understand what facts you're relying on.

So, Mr. Neilson, what facts have you testified to that supports the Fund's opinion that Deloitte did not do its due diligence?

MS. POSNER: Objection, same as prior.

If you have anything further to add, feel free to do so. If not, you can tell Mr. Schwartz that as well.

A. I have nothing further to add to that, Mr. Schwartz. I think I've answered that question at least a dozen times, as Laura has kindly said, so can we move on to the next question, please?

Q. No. We'll move on when you point me to the fact that I'm not -- that I'm not understanding.

If I'm wrong, then we can move on, I'll apologize.

What fact?

A. I just testified to.

MS. POSNER: Okay. Jed, I am going to instruct the witness not to answer this question for the 15th time now.

You've asked and answered it many,

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many times. He's given you a response. You don't like it, that's fine. But we're not going to sit here all day and ask the same question over and over again. You are harassing the witness.

BY MR. SCHWARTZ:

Q. Are you going to follow your counsel's instruction not to answer that question?

A. I am.

MR. SCHWARTZ: I'm going to ask the court reporter to mark that portion of the transcript, please.

Q. Mr. Neilson, have you read the complaint in this case?

A. I have.

Q. When did you read it for the first time?

A. I've read the complaint for the first time when I became involved in the case.

Q. When was that?

A. I don't know the exact date.

You have that in front of you, right?

Q. Was it within the past month or so?

A. Month or -- about two months.

TODD NEILSON

Q. Who at the Fund, if anyone, reviewed the complaint before it was filed?

A. Tara Chupka, who was our counsel, in-house.

Q. And how do you know that Ms. Chupka reviewed the complaint before it was filed?

A. 'Cause she was the one that provided all the documents for discovery.

Q. Did you ask Ms. Chupka if she read the complaint before it was filed?

A. I didn't ask her, no.

Q. How do you know that she did?

A. I don't know if she did. I assume she did, but I don't know what she did. You would have to ask her that.

Q. As the representative of the Fund, are you aware of any anyone at the Fund reviewing the complaint before it was filed?

A. Yes. Ms. Chupka and, of course, Mr. Burrows, who was in there prior to me as the plaintiff.

Q. Okay. Now, how are you aware that Ms. Chupka reviewed the complaint before it was filed?

TODD NEILSON

I thought you said you weren't aware of that.

A. I didn't say that at all. I said she was on it. I don't know if they read it for sure or not.

You're twisting my words, Counsel.

Q. Maybe there's a miscommunication.

As a representative of the Fund, are you aware of anyone at the Fund reviewing the complaint before it was filed?

A. Yes.

Q. Okay. Who at the Fund reviewed the complaint before it was filed?

A. Tara Chupka and Brian Burrows.

Q. And how do you know that Ms. Chupka reviewed the complaint before it was filed?

A. Well, because she was responsible for getting the stuff together, and she also was on calls with Laura and myself to try to get me up to speed with what was going on.

So I misspoke earlier with that. So, of course, she read it.

Q. And Ms. Chupka has told you that she reviewed the complaint before it was filed?

TODD NEILSON

A. I didn't have conversation with her to that specific -- excuse me.

Q. So as you sit here today as the representative of the Fund, you don't know one way or the other whether Ms. Chupka reviewed the complaint before it was filed. Is that fair to say?

MS. POSNER: Objection, misstates his testimony.

Q. You can answer.

A. She didn't tell me she reviewed it. I just assumed based on her knowledge of the case that she read it.

Q. Okay. Without assuming --

A. Excuse me -- and being an attorney working inside, I would assume that she read that and that's ...

Q. Were you finished?

A. Yes.

Q. So you're assuming that Ms. Chupka read the complaint before it was filed, but you don't know that, correct?

A. I never came out and asked her if she read it, but that would be correct then, yes.

TODD NEILSON

Q. And how do you know that Mr. Burrows reviewed the complaint before it was filed?

A. Again, I don't know, I never had a conversation with him on it, but he had the documentation on it that he was the original plaintiff.

So just before I became -- I read it first, too, before I put mine, so I just assumed, so I didn't have any prior knowledge to that.

Q. Okay. So assumptions aside, you don't -- sitting here as the representative of the Fund, you don't know that anybody at the Fund reviewed the complaint before it was filed. Is that fair?

MS. POSNER: Objection, misstates the testimony, and also calls for attorney-client privileged communications with counsel to the Fund.

Q. You can answer, unless your counsel instructs you otherwise.

MS. POSNER: You can answer, just don't reveal your communications with me or with Ms. Chupka.

A. Then could you restate that question,

TODD NEILSON

Jed, please?

Q. Sure. Sure.

So putting assumptions aside, because I'm just asking about facts, is it fair to say that, as the representative of the Fund, you don't know if anyone at the Fund reviewed the complaint before it was filed?

MS. POSNER: Objection, misstates his testimony.

A. Yes.

Q. What's the class period for the complaint?

A. February 2016 through December 2017.

Q. I should have asked this before, but are you looking at a document other than Exhibit 15?

A. No.

Q. And who are the members of the class that the Fund seeks to represent?

MS. POSNER: Objection.

Are you asking for the names?

MR. SCHWARTZ: I'm asking for the Fund's understanding of the members of the class.

TODD NEILSON

MS. POSNER: If you understand that --

I don't even understand that question.

A. I don't understand the question either.

Q. Okay. What is the class that the Fund seeks to represent?

A. I don't understand what you mean by "what is the class."

Q. Do you understand that this action that you're testifying in is what's called a "putative class action"?

A. Yes, I guess.

Q. What's your understanding of what --

A. I'm not an attorney. I'm an electrician by trade, so ...

Q. What's your understanding of what a class action is -- withdrawn.

I should be clearer. I'm asking about the Fund's knowledge.

What's the Fund's understanding of what a class action is?

MS. POSNER: Are you asking about a securities class action or just class actions in general?

TODD NEILSON

MR. SCHWARTZ: Whatever the Fund understands a class action to be.

MS. POSNER: It's beyond the scope of the 30(b)(6).

If you understand the question, you can answer.

A. I -- I don't know what counsel -- a class action is just a broad suit against a company or an entity.

Q. And do you understand that the Fund has sought to have this action certified as a class action?

A. I am.

Q. What is the Fund's understanding of what that means?

A. The Fund's understanding is that we are seeking to get a judgment for everyone involved that -- the class holders at this current time, and everyone benefits from that, if, in fact, it's successful.

Q. Who is the everyone that you referred to in your prior testimony?

A. The class holders.

Q. And what's your understanding of --

TODD NEILSON

what are the -- how are the class holders defined?

MS. POSNER: Objection, calls for a legal conclusion.

A. Anyone that were shareholders of that particular investment during the time that's in question.

Q. You see Topic 4 says your role and participation --

A. I'm sorry, I'm having difficulty hearing you.

Could you repeat that, please?

Q. Sure.

Can you hear me now?

A. Yes. You're a little bit farther from the mic. It was better when you were closer, that was all.

Q. Is this better?

A. Yes. Thank you.

Q. Topic 4 says your role and participation in the class action.

Do you see that?

A. I do see that, yes.

Q. What is the Fund's understanding of its role in this class action?

TODD NEILSON

A. Our role is to represent the class and to try to do what's best and get the best return and settlement for all the class and stakeholders, not just us.

Q. And how has the Fund gone about doing that to date?

MS. POSNER: Objection.

Do you understand the question?

THE WITNESS: I do not.

Q. Well, how has the Fund attempted to satisfy its role in this class action so far?

MS. POSNER: Objection.

If you understand.

A. I guess by applying to be the lead plaintiff in the case.

Q. Anything else?

A. Not that I can think of.

MR. SCHWARTZ: Okay.

Chassity, we can bring that document down. We'll probably go back to it later.

MS. POSNER: Jed, do you want to -- are you moving on to a new topic? Do you want to take a quick break?

MR. SCHWARTZ: Sure. That's fine.

1 TODD NEILSON

2 We can go off the record.

3 VIDEOGRAPHER: We're going off the
4 record at 10:55 a.m.

5 (Recess.)

6 VIDEOGRAPHER: We're back on the
7 record at 11:08 a.m.

8 BY MR. SCHWARTZ:

9 Q. Mr. Neilson, is there anyone in the
10 room with you as you're testifying?

11 A. No.

12 Q. Are you looking at anything other than
13 the screen that has the litigation --
14 LiveLitigation app?

15 A. I am not.

16 Q. Do you have any documents with you?

17 A. No, sir.

18 Q. Are you able to see your testimony as
19 it's being given?

20 A. Am I able to see it? What do you
21 mean? I don't -- you mean, on a video, on video
22 here?

23 Q. Well, are you able to see a transcript
24 of your testimony?

25 A. No.

1 TODD NEILSON

2 THE WITNESS: Laura, you're on mute.

3 MS. POSNER: Oh, sorry.

4 He would have to hit that scroll thing
5 if you want him to look at it.

6 MR. SCHWARTZ: No, I don't. I just
7 wanted to know if he was looking at it.

8 THE WITNESS: To that point, I would
9 like to amend my previous testimony.

10 I talked to my attorney during the
11 break, if possible, and, you know, it was
12 brought to my attention, because Tara Chupka
13 is an in-house attorney, I had conversation
14 with her about the complaint and about
15 reading the document, and at that time, in
16 preparation for today's deposition, she did,
17 in fact, read those -- all of the documents,
18 and she was responsible for putting together
19 all of the discovery evidence.

20 So she did, in fact, read the
21 complaint, as did Brian Burrows, according
22 to Tara, as previously stated. So I was ...

23 BY MR. SCHWARTZ:

24 Q. Okay. What did Ms. -- what else did
25 Ms. Chupka tell you during this conversation?

1 TODD NEILSON

2 MS. POSNER: Objection.

3 He's -- the reason he's having a
4 difficult time answering these questions is
5 she has attorney-client communications with
6 him as general counsel to the Fund.

7 So if you want to ask general
8 questions, he can answer, but he can't talk
9 about the substance of their questions -- of
10 their conversations.

11 MR. SCHWARTZ: Well, he just disclosed
12 the substance of the conversation, so I want
13 to know everything else that was discussed
14 during that conversation.

15 MS. POSNER: No, he did not disclose
16 the substance of the conversation.

17 You had asked him whether he knew, and
18 he was explaining why he couldn't get into
19 the substance of that conversation but what
20 she had confirmed for him in preparation for
21 today's deposition.

22 Q. Mr. Neilson, you just testified about
23 a conversation with Ms. Chupka, right?

24 A. I did.

25 Q. When did that conversation take place?

TODD NEILSON

A. That was -- that took place a few weeks ago prior to me taking over and for seeing this stuff moving forward to make sure I was fully aware of all that had been done up until that point.

Q. What else did Ms. Chupka tell you during that conversation?

MS. POSNER: Don't disclose any privileged communications.

If you're asking him about his communications with regard to preparing for the -- for today's deposition, that's a different story, so if you could clarify, please.

MR. SCHWARTZ: No, I don't -- I'm not going to change the question.

If you're going to instruct him not to answer, you can do that, but I want to make sure I have a clear record.

I'm asking the witness to tell me everything else that he discussed with Ms. Chupka during this conversation that he's already testified to.

MS. POSNER: Objection.

TODD NEILSON

If you can testify as to the topics you discussed with Tara but not the substance, that is fine.

A. Essentially, what my responsibilities would be with communicating with Cohen Milstein, Laura, making sure that I reviewed all the documents and what has to happen moving forward in the event that my interaction would be required to review documents to make sure that Laura and her firm were doing everything they needed to do on their end as it applies to this case.

Q. What other topics were discussed?

A. No other topics other than those that we've just mentioned as far as the filings, the discovery, and everything else.

Q. So was -- this was the conversation you had with Ms. Chupka where you learned about your responsibilities and your role in this litigation going forward?

A. Yes, what I would be responsible to do and what was being asked of me.

Q. Were you aware of this litigation before that conversation with Ms. Chupka?

A. No.

TODD NEILSON

Q. So did you ask Ms. Chupka what the litigation was about?

A. Yes.

Q. Okay. And what did she say?

A. That we're filing to be lead plaintiff in a class action suit based on the SCANA investment against Deloitte & Touche.

Q. Were you aware of the SCANA investment at the time?

A. I was not.

Q. Did you ask her what the SCANA investment was?

A. Yes. After we got into that, yes.

Q. And what did she say?

A. I read the documents. I was given the documents at that point to go through and try to get a better understanding of what it was.

Q. Did you know who Deloitte & Touche was at that time?

A. No.

Q. Did you ask who they were?

A. At that point, I read the complaint -- some of the complaint. I had it in front of me, so I kind of knew who it was at that point.

TODD NEILSON

I don't recall if she said who they were, and given the brief synopsis, I'm kind of remiss as far as the time frame with that.

Q. Did you have the complaint in front of you when you had this conversation with Ms. Chupka?

A. I don't recall.

Q. So did you ask Ms. Chupka what Deloitte had done wrong?

A. I did not.

Q. So this is the conversation in which Ms. Chupka told you you were going to have significant responsibilities in connection with the litigation, right?

A. Yes.

Q. And she told you that the claims were going to be asserted against Deloitte & Touche, right?

A. Yes.

Q. And you didn't ask any question as to what those claims were or what Deloitte was accused of doing wrong?

MS. POSNER: Objection, misstates his testimony.

TODD NEILSON

A. At that point, not to Ms. Chupka, no. I was handling that stuff directly with Laura and my counsel.

Q. So at what point did you become aware of what the Fund's claims were against Deloitte?

A. When I read the complaint.

Q. How long after this conversation with Ms. Chupka did you read the complaint?

A. I -- I can't honestly answer that. I don't know.

Right around the same time. There wasn't a lot of time that lapsed.

Q. What's the Fund's understanding of what Deloitte's role was with respect to SCANA during the class period?

A. Could you repeat that question, please?

Q. Sure.

What's the Fund's understanding of what Deloitte's role was with respect to SCANA during the class period?

A. They were the auditor of the project and all of the financials for SCANA.

Q. And when you say the "project," what

TODD NEILSON

do you mean?

A. The building of the nuclear power plant in South Carolina.

Q. What's your basis for your statement that Deloitte was the auditor of the nuclear power plant project?

A. 'Cause they're listed as the auditor for the project in the documentation that I've read.

Q. What documentation are you referring to?

A. All of the brief, the binder put together stating all the stuff that -- all the discovery and everything and the nature of the complaint against Deloitte.

Q. So the documentation you're referring to is the complaint, correct?

A. The complaint and everything else that was put together and given to me for my review to familiarize myself.

Q. Okay. What were those documents that were given to you for your review?

A. It was a copy of the complaint and all the exhibits and the list of questions that you

TODD NEILSON

were going to be going through and asking me today.

Q. Were there any other documents that you're aware of that identified Deloitte as the auditor of the nuclear power plant construction project?

A. Not that I'm aware of, no, not that I've seen.

Q. Has the Fund -- withdrawn.
What is the Fund's understanding of what Deloitte's responsibilities were as the purported auditor of the nuclear project?

A. To accurately --

MS. POSNER: Objection.

THE WITNESS: I'm sorry, Laura?

MS. POSNER: Objection.

If you can answer, go ahead.

A. Just to report back to the stakeholders the status of the investment project, the construction, as previously stated.

Q. Who are the stakeholders?

A. Everybody -- all the class holders, the people that own common stock in the company that were defrauded because of this.

TODD NEILSON

Q. Is it the Fund's understanding that Deloitte did, in fact, report on the status of the construction project?

A. Can you repeat that question, please?

Q. Is it the Fund's understanding that Deloitte did, in fact, report on the status of the construction project?

A. It is our understanding, yes.

Q. And what document contains that report that you just referred to?

A. I haven't seen a document saying that they reported on it.

Q. What is the Fund's basis for its testimony that Deloitte did, in fact, report on the status of the construction project?

MS. POSNER: Objection, calls for a legal conclusion and is an improper contention interrogatory.

But if you can answer. Go ahead.

A. As the auditors of this project, no different than what my obligation is as a trustee, you have a fiduciary responsibility to report to the class holders where this -- what the status of this project is.

TODD NEILSON

And I don't -- and we don't feel that that has happened, and hence, it's where we're at in this case.

Q. So I'm confused. You just said you don't feel that that has happened.

You don't feel that what has happened?

Because I thought you testified that the Fund did, in fact, believe that Deloitte reported on the status of the project.

MS. POSNER: Objection.

You can answer.

A. I don't believe that they did their due diligence in reporting it back to everyone.

Q. Okay. So look, I want to make sure that I understand your testimony.

You testified that it's the Fund's understanding that Deloitte did, in fact, report on the status of the construction project.

Do you recall testifying to that a minute ago?

A. Yes.

Q. Now, do you want to change that testimony or is that still your testimony?

A. No, it's still my testimony.

TODD NEILSON

I guess you're reading it right from there, so, yes.

Q. And then I asked you: Is there a document that contains that report?

And you said you haven't seen any document that they reported on it.

Do you recall that?

A. I do.

Q. So now I'm asking, since it apparently is not in a document, what is the Fund's basis for the testimony that Deloitte did, in fact, report on the status of the construction project?

MS. POSNER: Objection, misstates his testimony.

He didn't say he -- that there are no such document existing. He said he hasn't seen any documents.

Q. Are you aware of a document that exists that you haven't seen?

A. I am aware that there have been several judgments against SCANA, the managers of SCANA defrauding people out of -- you know, lying under testimony, you know, there's -- the list goes on and on. There's a whole -- this is just

TODD NEILSON

another in the long line of things that went on with -- as it applies to the SCANA project.

Q. Is SCANA Corporation a defendant in this case?

A. No.

Q. Is any officer or director of SCANA a defendant in this case?

A. No, not to my knowledge.

Q. So you're aware, apparently, of some judgment against SCANA. Is that correct?

A. Multiple, I believe, yes.

Q. And is it your testimony that these judgments are, in fact, the documents in which Deloitte reported on the status of the construction project?

MS. POSNER: Objection, misstates his testimony.

A. I don't know. I'm not certain of that.

Q. Okay. So I just want to understand, what is the fact or facts that the Fund is relying on to support the testimony that Deloitte did, in fact, report on the status of the construction project?

1 TODD NEILSON

2 MS. POSNER: Objection, improper
3 contention interrogatory.

4 If you can answer, feel free.

5 A. I -- I have no -- I have not seen any
6 documents included in my binder stating that fact.

7 Q. I'm just asking as broad as can be, is
8 the Fund aware of any fact that supports the
9 testimony that you just gave?

10 MS. POSNER: Objection, other than
11 what he's testified to.

12 If you can answer, feel free.

13 MR. SCHWARTZ: I don't know what that
14 means.

15 Q. I'm just asking as broad as a question
16 as possible, because I don't think you've
17 identified a single fact.

18 So is the Fund aware of any fact that
19 supports your under-oath testimony that it is the
20 Fund's understanding that Deloitte did, in fact,
21 report on the status of the construction project?

22 MS. POSNER: Objection. It's an
23 improper contention interrogatory.

24 But if you can answer, go ahead.

25 A. Yeah, I don't have an answer for that.

TODD NEILSON

I don't know.

Q. Now, you mentioned -- withdrawn.

You testified earlier about fiduciary responsibilities to report to class holders.

You recall that testimony?

A. Yes.

Q. Is it the Fund's testimony that Deloitte has some sort of fiduciary responsibility to the class members?

MS. POSNER: Objection, calls for a legal conclusion.

A. I would just think, as an auditor, that they were no different than an IRS audit that they would do, go dig deep to make sure that everything was on the up and up, just as what my understanding is of what an auditor does, but that's just from a electrician's perspective.

Somebody that audits is somebody that goes through and looks at every last detail to make sure everything is in order, and it appears that that wasn't the case here.

Q. I just want to understand.

Is it the Fund's position that Deloitte owes a fiduciary duty to any of the class

TODD NEILSON

members?

MS. POSNER: Objection, calls for a legal conclusion.

But if you can answer, go ahead.

A. In the Fund's opinion, yes.

Q. Okay. And what's the basis for the Fund's opinion that Deloitte owes a fiduciary duty to the class members?

MS. POSNER: Objection, calls for a legal conclusion.

A. As somebody who's an auditor, they should be able to go through and see if there's any kind of indiscretions, if there's any kind of things that don't add up, deadlines that aren't going to be met. That's the whole purpose of somebody performing an audit.

Q. And if it turns out that the Fund is wrong and Deloitte doesn't, in fact, owe a fiduciary duty to the class members, does that change your view as to the claims asserted?

A. No, not at all.

MS. POSNER: Objection.

Q. Why not?

A. Just as I previously stated what my

TODD NEILSON

understanding is an auditor's job to do.

Q. Now, is it your -- withdrawn.

Is it the Fund's understanding that Deloitte was specifically retained to audit the schedule of the nuclear project?

A. Specifically scheduled, no. To audit everything, the financials, everything as its -- as a whole, not just the schedule.

Q. When you say the "financials," what do you mean?

A. Making sure they had enough money to complete the project, making sure that everything was going as planned and everything was getting reported back to the investors, you know, the stakeholders, honestly and timely.

Q. And so when you're referring to financials, you're referring to the financials of the construction project. Is that right?

MS. POSNER: Objection, misstates his testimony.

A. Not just the construction project, as per the whole investment. A lot of it was tied -- a lot of the profits, what they were hoping for, was tied to the construction of the reactors based

TODD NEILSON

on the need -- the demand for power -- additional power in that area, and the over a billion dollars' worth of tax credits that were tied into it being completed in a timely fashion, which would have, in turn, been more profitable for all the stakeholders and class holders.

Q. What's the investment that you have referred to several times?

A. What's the investment?

Q. Yeah. You referred to, for example, in your last question -- in your last answer, you said, "Not just the construction project, as per the whole investment."

What do you mean by the "whole investment"?

A. Everything that's part of the SCANA investment in that portfolio from LSV.

Q. So is it your testimony that the Fund's understanding is that Deloitte was responsible for auditing everything with respect to SCANA?

MS. POSNER: Objection, calls for expert testimony.

But if you can answer, go ahead.

TODD NEILSON

1
2 A. I -- I'm not an expert on that. Like
3 I said, I would just think that -- yes, as part of
4 that, yes.

5 Q. Now, you said it was the Fund's
6 understanding that these tax credits would have
7 made things more profitable for all stakeholders
8 and class holders.

9 What did you mean by that?

10 A. According -- according to all the
11 information that I've read in the complaint, that
12 there was \$1.2 billion, somewhere in the
13 neighborhood of that, in tax credits available
14 if -- if the project was completed and deadlines
15 were met and it was up and running in the given
16 amount of time, that there was federal tax credits
17 involved, and that wasn't met. Those dates
18 weren't met.

19 Q. What's the Fund's understanding as to
20 who would receive the benefit of those tax
21 credits?

22 A. The Fund's understanding is anyone
23 that was a stakeholder in that investment and all
24 the people that held that investment in their
25 portfolios, not just us --

TODD NEILSON

Q. So when you say "stakeholder" --

A. -- as a Fund.

Q. -- you mean investors in SCANA stock?

A. Yes.

Q. So it's the Fund's understanding that the investors in SCANA stock would have received the benefit of those tax credits?

A. No, that they would -- their stock would become more valuable because of those tax credits.

Q. What's the Fund's understanding as to whether the economic benefit of those tax credits would have been passed on to SCANA's rate payors?

MS. POSNER: Objection.

If you can answer, go ahead.

A. I'm not an expert in that category, so I don't really know. I would just -- it would just be more valuable. You know, just from my perspective, it would seem it would be more valuable from the Fund's perspective because it would be more profitable, and that profit generally gets passed on to its stakeholder.

Q. What's the basis for the Fund's understanding that these tax credits would allow

TODD NEILSON

SCANA to be more profitable?

MS. POSNER: Objection, asked and answered.

A. Asked and answered, right, that it would make that stock more valuable because you're getting \$1.2 billion tax credit on the initial investment to credit, so it would be -- it would help fund it -- self-fund it.

MR. SCHWARTZ: Okay. Let's move to Tab 2, Chassity, and we'll mark it as Exhibit 16.

THE WITNESS: I heard somebody's dogs barking.

MR. SCHWARTZ: That's mine.

THE WITNESS: There must be another dog walking by.

(Exhibit 16, Declaration of Todd Neilson in Support of Supplemental Motion for Class Certification, Appointment of Class Representative, and Appointment of Class Counsel, was marked for identification at this time.)

BY MR. SCHWARTZ:

Q. Okay. Mr. Neilson, you should have

TODD NEILSON

before you a document that's been marked as Exhibit 16. It's titled, "Declaration of Todd Neilson in Support of Supplemental Motion for Class Certification, Appointment of Class Representative, and Appointment of Class Counsel."

Do you see that?

A. I do.

Q. Have you seen this document before?

A. I have.

Q. And is that your signature on the fourth page of the document?

A. It is.

Q. Okay.

When you or -- when you signed this, did you understand that you were signing it under oath?

A. I did.

Q. And you believed then that all the statements in here were true and accurate?

A. I did.

Q. Okay. Who wrote this declaration?

A. Who wrote it?

Somebody from Cohen Milstein, I believe.

TODD NEILSON

Q. Did you review it before you signed it?

A. I read through it, yes.

Q. And you were comfortable that everything was -- was true and accurate when you signed on it?

A. Yes.

Q. I'm going to go back to page 1.

Are you at page 1?

A. I am now, yes.

Q. Okay. And do you see that paragraph 1 refers to the Local 98 Pension Fund?

A. I do.

Q. And that's the Fund that we've been talking about today, right?

A. Yes.

Q. And then paragraph 3 refers to the Local 98 Union.

Do you see that?

A. Yes.

Q. And that's the Union that we've been discussing, right?

A. Yes.

Q. Now, paragraph 3 says that the Union

TODD NEILSON

and the Fund are two distinct legal and corporate entities with different governing structures.

Do you see that?

A. I do.

Q. What is the governing structure of the Fund?

A. The Fund is made up of eight trustees, four management trustees. One is a management chairman, along with three trustees.

And on the Union side, we currently have one chairman and two trustees with one vacancy.

Q. And what is the difference --

A. Due to a recent retirement -- sorry -- due to a recent retirement last year, that last seat hasn't been filled yet.

Q. What is the difference between a management trustee and a Union trustee?

A. A Union trustee is -- they're members of the Union that are sitting on the Fund, and the management trustees are members of our contractors' association, which is NECA. It's the National Electrical Contractors Association.

The Penn, Jersey, Delaware chapter,

TODD NEILSON

which is our regional chapter, they have four contractor trustees that sit on that board as well. They weigh in equally on any kind of changes to the formats and stuff that we do.

Q. Who are the four management trustees?

A. Jeff Scarpello, Jerry Rothstein, Tom Moore, and the fourth one off the top of my head, I'm just -- I can't think of the fourth one off the top of my head.

Q. Is it Charles McDonald?

A. Charlie McDonald, yes. Thank you, yes. Thank you.

Apologize. I'm a little nervous. I've never done this before.

Thank you.

Q. What role have any of the four individuals that you just mentioned played with respect to this litigation?

A. None.

Q. Why?

A. Because I took over for -- as the lead plaintiff -- as the representation of the Fund in this litigation.

Q. Who asked you to do that?

TODD NEILSON

A. Tara Chupka, who's the attorney for the Fund, in-house counsel.

Q. And did she do this -- do that in the same conversation that we talked about before?

A. I don't recall if it was the same conversation, but it was a conversation about this.

Q. What did Ms. Chupka tell you as to why you were being asked to take over as the representative?

A. They asked me to take over this because Brian was stepping away from it.

Q. Did you ask why Mr. Burrows was stepping away from it?

MS. POSNER: Objection.

Are you asking if he asked Tara?

A. I didn't ask her why. They asked me to do it, if I would mind doing it, and I just did it.

Q. Did anybody tell you why Mr. Burrows was stepping away from this litigation?

MS. POSNER: Objection, asking for attorney-client privileged communications.

If you can answer without disclosing

TODD NEILSON

attorney-client privileged communications.

A. I cannot answer without violating attorney-client privilege.

Q. Who are the three Union trustees for the Fund?

A. Brian Burrows, Michael Masculli, and Mike Hnatkowsky.

Q. And you testified that Mr. Burrows is the president of the Union. Is that correct?

A. He is, yes.

Q. And who is Mr. Masculli?

A. Mr. Masculli is recording secretary for the Union and the trustee.

Q. As the president of the Fund, does Mr. Burrows have the ability to fire you from your position -- withdrawn.

As the president of the Union, does Mr. Burrows have the ability to fire you from your position at the Union?

A. No.

Q. Does Mr. Burrows have the ability to fire Mr. Masculli?

A. No.

Q. Is it -- is it the case that only

TODD NEILSON

Mr. Dougherty has the ability to fire you and Mr. Masculli?

A. No. He can only -- I can only be fired as a business agent by Business Manager Dougherty. I'm an elected officer of the Union, as is Michael Masculli, so his position as recording secretary, he holds that until he is voted out of office by the membership. And Mr. Masculli is not a full-time employee of Local Union 98, so he cannot be fired. He is an elected officer, as am I in my secondary role.

Q. Do you or Mr. Masculli receive any compensation in your roles as elected officers of the Union?

A. Me being an elected officer, I don't get compensated because I am a full-time officer; however, Mr. Masculli does get minor compensation for attending meetings as such.

Q. Okay --

A. It's on a per diem basis, to add to that, and he gets \$20 per meeting attended, and I believe he gets -- and don't quote me on it -- about \$150 per quarter, something along those lines, is what his compensation is for being the

TODD NEILSON

recording secretary.

Q. Okay. And so focusing on your --
sorry, withdrawn.

You are a business manager. That's
the position for which you get paid, correct?

A. No. I am a business representative.

Q. So you're -- as a business
representative, that's the position for which you
get paid, correct?

A. Correct. And by virtue of that, I'm
not allowed to be duly compensated for my role --
my position as executive board because I am a
full-time personnel getting -- receiving full-time
pay.

Q. And is it -- is it the case that only
Mr. Dougherty is able to fire you from your
position as the business representative?

A. Yes.

Q. Does Mr. Dougherty have any role with
respect to the Fund?

A. No.

Q. Do you know someone named Michael
Neill?

A. Yes.

TODD NEILSON

Q. Does he have any role with respect to the Fund?

A. No.

Q. Do you know someone named Marita Crawford?

A. Yes.

Q. Does she have any role with respect to the Fund?

A. No.

Q. Do you know someone named Niko Rodriguez?

A. Yes.

Q. Does he have any role with respect to the Fund?

A. No.

Q. Do you know someone named Brian Viacca?

A. Yes.

Q. Does he have any role with respect to the Fund?

A. No.

Q. Does the Fund have an auditor?

A. Yes.

Q. Who is the auditor?

TODD NEILSON

A. I'm not sure who it is. It's one of the -- one of the big ones.

Q. Is it Deloitte?

A. It is not.

Q. Does the Board of Trustees on which you sit oversee the Fund's auditor?

A. Yes. They report to us orally. They come to our quarterly meetings.

Q. And what are the responsibilities of the Fund's auditor?

A. To audit the Fund and the financials, to make sure everything is in order financially, and that the -- that the numbers match. Everything at the end of the day is what it appears to be.

Q. Does the Fund execute an engagement letter with its auditor?

MS. POSNER: Objection, beyond the scope of the 30(b)(6).

Can you identify what -- what topic this is in reference to -- not you, Todd -- Mr. Schwartz.

MR. SCHWARTZ: Well, are you going to direct him not to answer?

1 TODD NEILSON

2 MS. POSNER: I'm asking you to
3 identify for me which topic in your notice
4 this question goes to.

5 MR. SCHWARTZ: I'm not going to do
6 that. I'm just going to ask him the
7 question, and if you're going to direct him
8 not to answer, then that will be what it is.

9 MS. POSNER: You're refusing to
10 identify which topic in the 30(b)(6) notice
11 your question goes to?

12 MR. SCHWARTZ: Yeah, I'm not going to
13 go through and justify every question I ask
14 based on the topics.

15 If you want to instruct him not to
16 answer, it's your position that it's outside
17 the scope, you're entitled to do that.
18 You're entitled to instruct him not to
19 answer, and I'll ask him if he's going to
20 follow his counsel's instruction.

21 MS. POSNER: I haven't asked you do
22 that with regard to every question. I've
23 asked you with regard to this question to
24 please identify which one of the topics of
25 the 30(b)(6) the question pertains to, and

TODD NEILSON

quite frankly, this whole line of questioning.

BY MR. SCHWARTZ:

Q. Are you going to answer the question?

A. What was the question again?

MS. POSNER: Just to be clear, before you go on, you're refusing to identify the topic that your question goes to?

Q. Does the Fund execute an engagement letter with its auditor?

MS. POSNER: Objection.

Please identify the topic in the 30(b)(6) this question goes to.

MR. SCHWARTZ: Just -- if you're going to instruct him not to answer, do that. Let's not bog this down.

MS. POSNER: I'm going to ask the court reporter to mark this portion of the transcript.

If you can answer the question, you can go ahead, but I'm going to stop this line of questioning if it goes any further.

A. I'm not certain. I don't know.

Q. Turning to page 2 of Exhibit 16, do

TODD NEILSON

you see paragraph 5?

A. I do.

Q. Here it states that the Fund is a Taft-Hartley-defined benefit plan.

Do you see that?

A. I do.

Q. What does that mean?

A. That it's a defined -- defined -- defined benefit plan, and it's a pension fund that is under scrutiny of the rules of the Department of labor and can only be invested in -- certain types of investments are allowed.

Q. Now, in that same paragraph, you write: "The Department of Labor can file a complaint to enjoin acts and practices that constitute a breach of fiduciary duty, including removal of a fiduciary."

Do you see that?

A. I do see that, yes.

Q. Has that happened?

MS. POSNER: Ever?

Can you clarify your question? Are you asking with regard to this Fund and at any point in time?

TODD NEILSON

MR. SCHWARTZ: Yes.

A. Not to my -- not since I've been the trustee on the plan.

Q. Do you see paragraph 6?

A. I do.

Q. The last sentence says, "Pursuant to Section 3.15 of the Local Pension Plan Trust Plan, the Board of Trustees is authorized to take action to remove any trustee by a majority vote in the event that a trustee violates ERISA."

Is that accurate?

A. Yes.

Q. Is that the only ground on which a trustee may be removed?

A. I don't have any --

MS. POSNER: Objection, calls for a legal conclusion.

A. I don't have any knowledge of any trustee being removed, so I'm sure there were -- if something were to come up and we would take a -- if somebody -- there was any wrongdoing involved, as trustees, we have a fiduciary responsibility to all the people in there to make sure that we protect the assets of the Fund and

TODD NEILSON

our members.

So if somebody was doing something detrimental to the Fund and to the members, then we would have to do our due diligence to have that person removed, if that were the case.

Q. In your time as trustee of the Fund, are you aware of anyone that has taken action that was detrimental to the Fund or its members?

A. No.

Not as it applies to the current trustees, no.

Q. What about as it applies to people who are not the current trustees?

A. I -- I don't have any reason to believe that. I don't know who, about past trustees. I only know who's on there since I've been on there. That's all I can speak to.

Q. Do you see paragraph 7?

A. I do.

Q. The second sentence says, "The indictment involves criminal allegations against certain individuals for conduct that allegedly occurred in their employment with the leadership of the Local 98 Union."

1 TODD NEILSON

2 Do you see that?

3 A. I do.

4 Q. What is your understanding of the
5 indictment's allegations?

6 MS. POSNER: Objection, beyond the
7 scope of the 30(b)(6), and the pending
8 motion for a protective order.

9 And I'm going to instruct the witness
10 not to answer.

11 MR. SCHWARTZ: So, Laura, just so we
12 cannot burden the record, will it be your
13 instruction that Mr. Neilson is not -- will
14 not be answering any questions related to
15 the indictment or the allegations in the
16 indictment or the labor complaint or the
17 allegations in the labor complaint?

18 MS. POSNER: That is correct, and
19 consistent with our e-mail to you from a few
20 days ago --

21 MR. SCHWARTZ: Okay.

22 MS. POSNER: -- and as is set forth in
23 our pending motion for a protective order.

24 MR. SCHWARTZ: Okay. So look, I don't
25 want to go through the litany of questions

TODD NEILSON

just to have you instruct him not to answer.

So that I can preserve the record, can we have an agreement that, you know, whatever the outcome of that motion for a protective order, that, if we were to prevail, I don't need to have asked every single question here so that we can avoid that?

MS. POSNER: Agreed.

MR. SCHWARTZ: Okay.

BY MR. SCHWARTZ:

Q. Okay. Mr. Neilson, do you see paragraph 10 on page 3 of your declaration?

A. I'm sorry?

Q. Yes. Do you see paragraph 10 of your declaration?

A. I do.

Q. It says, "The Local 98 Pension Fund Board of Trustees is aware of the indictment and labor case and has not taken any action to remove Mr. Burrows from his role."

Do you see that?

A. I do see that, yes.

Q. What was the basis for the board's

TODD NEILSON

decision not to remove Mr. Burrows from his role?

A. Those are allegations. Those are not convictions. No reason to remove him.

Q. Did the board of the Fund undertake any investigation of the allegations?

MS. POSNER: Objection.

If you can -- if you can testify to that without disclosing attorney-client privileged communications, that's fine. But if not, please don't disclose attorney-client privileged communications.

A. We were made aware of it, and we were reassured by counsel that it wouldn't affect the Fund and the Fund was not under scrutiny, and we left it at that.

Q. Paragraph 11 says, "The Department of Labor is also aware of the indictment and labor case and has not taken any action to remove Mr. Burrows from his role."

Do you see that?

A. I do see that.

Q. Do you understand that to still be the case as you sit here today?

A. I have no reason to believe it not to

TODD NEILSON

be. It's what's stated in your -- to my knowledge, no, there's been no other action taken, to the Fund's knowledge.

Q. Can you turn to the next page?

Are you there?

A. Yes.

Q. And do you see paragraph 13?

A. I do.

Q. That states, in part, "The sole authority to make all decisions with regard to this action on behalf of the Local 98 Pension Fund has been delegated to me."

Do you see that?

A. I do.

Q. Why were you chosen as the person to whom sole authority to make decisions was delegated?

MS. POSNER: Objection.

If you can answer that without disclosing attorney-client privileged communications, you can go ahead.

A. I believe that I was asked because I'm a full-time person for the Union.

The only other Union trustee works in

TODD NEILSON

the field, and if they would have had to take time off, it would have -- they would have had to be compensated for their time off, and that would have put additional strain on the Fund because they would have had to have done that, and that would have come out of the Fund's money, to reimburse for his salary.

So I believe that was why I was asked instead of him.

Q. Did the Fund consider having one of the management trustees oversee the litigation?

A. No.

Q. Why not?

A. Because it's a Union Pension Fund which we're participants in, and the management trustees are not.

So these -- also, these management trustees, they run contracting businesses. They're electrical contractors. They may not necessarily have the time to put forth the effort that this took, and to ask them to do that undertaking would be a burden on some of those folks.

Q. Was there any discussion at the --

TODD NEILSON

among the trustees as to who would be given sole authority to make all decisions with respect to this litigation?

A. No.

Q. Was the decision to have you take on that responsibility documented by the Fund in any way?

A. No, not to my knowledge.

Q. Has there been any vote or resolution by the trustees of the Fund to have you take over?

A. No.

Q. Do the management trustees know that you've taken over this litigation?

A. I don't know what counsel has advised them of, so I don't know.

Q. Sitting here testifying on behalf of the Fund, are you aware of whether or not the management trustees know that you have taken over for Mr. Burrows?

A. I do not know that.

Q. Now, Mr. Burrows is the president of the Fund, correct?

A. No, incorrect. He's president of the Union, not president of the Fund.

TODD NEILSON

He is a cochairman of the Fund. He and Jeff Scarpello are cochairmen. One management side, one Union side.

Q. And I believe you testified before, as cochairman of the Fund, he oversees all of the funds that the Pension Fund has. Is that correct?

A. I don't know.

MS. POSNER: I'm sorry, I just -- can you repeat that, Jed? I didn't get it.

MR. SCHWARTZ: Yeah, let me just try to get your testimony.

All right. Well, we will -- my LiveNote isn't working, so I'll try to find that later.

Q. What is Mr. Burrows' role as cochairman of the Fund?

A. That means he and Jeff usually are the top signers on things.

We all sign off on different things, changes in the Fund and what have you, changes in rules of the Fund, but just to have somebody as a spokesperson from management and from the Union side.

No more of a vote or it doesn't carry

TODD NEILSON

much more weight than -- it's just a point person.
If they have smaller meetings, it would be the
chairman on both sides to where you can't --
everyone can't get together in between meetings,
so you have a person to -- point person on each
side to talk to without getting the entire group
together all the time.

Q. Your paragraph 13 says, "Mr. Burrows
will have no role in overseeing this litigation,
its resolution, or distribution of any settlement
proceeds or judgment, if any."

Do you see that?

A. I do.

Q. What steps has the Fund taken to make
sure that that is the case?

A. They replaced him as lead plaintiff
for the Fund with me.

Q. Well, has the Fund made any attempt to
prevent Mr. Burrows from participating in any
decisions related to the litigation?

MS. POSNER: Objection.

I'm not sure I understand that
question.

A. He is no longer in communication with

TODD NEILSON

anything with this case. Everything now is going through me as it applies to this case, and Laura, of course, as my counsel for the Fund.

Q. Has the Fund passed any resolution or enacted any rule that would take authority from Mr. Burrows -- take authority away from Mr. Burrows with respect to this litigation?

A. No, other than the filings. The filings have all been -- everything has been refiled and everything has been legally switched over to me as the plaintiff -- as a representative of the Fund in this case.

Q. But Mr. Burrows still retains the ability to vote on all relevant Fund matters, right?

A. Yes.

Q. And if the Fund decides to take an action with respect to this litigation, if Mr. Burrows's -- isn't Mr. Burrows entitled to provide his input into that?

A. I'm not sure I understand the question.

Q. Sure.

So your -- your statement here says

TODD NEILSON

Mr. Burrows will have no role in, for example, the resolution of this action.

Do you see that?

A. I do see that, yes.

Q. How has the Fund -- when has -- withdrawn.

What has the fund done to prevent Mr. Burrows from participating in the resolution of this action?

MS. POSNER: Objection, asked and answered.

But you can answer again.

A. They have removed him as the plaintiff representing the Fund in this case with me, and all communication and anything as it applies to this action will go through me and my counsel.

Q. If the Fund decides to resolve this matter, will all of the trustees have to vote on that?

A. If, in fact -- if, in fact, it comes to that point, then, you know, if something needs to be made aware of it based on this, then if a vote needs to be taken, then he will be asked to take himself out of it and abstain, if that's

TODD NEILSON

necessary to adhere to this, the documentation that he won't be involved in the litigation or the resolution.

We'll cross that bridge when we come to it.

Q. Have you spoken to Mr. Burrows to confirm that he would do that?

A. I did not. I haven't spoken to him at all about this case.

Q. Now, paragraph 13 says that you prepared a new certification attached as Exhibit A.

Do you see that?

A. I do.

Q. And that's the document that's behind this listed as Exhibit A, correct?

It begins on page 6?

A. I don't have it in front of me, you have it, so you can -- yeah, I guess that's it. I do now, yes.

Q. Did you prepare this document?

A. I did not.

Q. Did you -- did you sign this document?

A. Yes.

TODD NEILSON

Q. Did you understand you were signing this under oath?

A. I did.

Q. And you reviewed it to make sure it was accurate?

A. Yes, I did.

Q. Now, paragraph 2 says, "IBEW Local 98" -- which is the Fund, correct?

A. No, it's not correct. IBEW 98 we said is the Union.

The Fund is the Fund. Those are two separate entities.

Q. Yeah. So if you look, it's a little -- it's a little different with this document.

So if you look at the very first paragraph --

A. I'm sorry, yes, I see it at the top in parentheses.

As it applies to this document, yes. I apologize.

Q. No problem.

So paragraph 2 is referring to the Fund, correct?

TODD NEILSON

A. Correct.

Q. And it says, "The Fund didn't purchase the security that's the subject of this action at the direction of counsel or to participate in any private action."

Do you see that?

A. I do see that, yes.

Q. What did you do to make sure that you were comfortable that was accurate?

A. I'm not sure I understand your question.

Q. Well, how did you know that was true when you signed this document?

A. Because we went through all the documents. I had our counsel go through all the documents, and nothing was done after this at that time.

I'm just -- I'm not understanding the line of questioning. Can you rephrase that, please?

Q. Well, you -- when you reviewed this document, you wanted to make sure that that statement was true, correct?

A. Yes.

TODD NEILSON

Q. How did you make sure that that statement was true?

A. How did I make sure?

I didn't make sure it was true. I reviewed it with counsel prior to signing it to make sure that all that stuff was done prior to me doing so.

Q. Now, paragraph 4 refers to a -- an attached Schedule A.

Do you see that?

A. I do.

Q. Now, the version of this document that we have did not include a Schedule A.

Did you see a Schedule A when you signed this?

A. I saw it as part of the binder. I didn't see it as part of the document. I was made aware of it, though.

And it has since been amended, it's my understanding.

Q. What has been amended?

A. The filing.

Q. To include a Schedule A?

A. Yes.

TODD NEILSON

Q. Paragraph 6 says, "IBEW Local 98 has fully reviewed the facts and allegations of the consolidated complaint filed in this action."

Do you see that?

A. Yes.

Q. And who is that referring to at Local 98 that did that?

A. The Pension Fund.

Q. Who at the Pension Fund?

A. The attorneys for the Fund and myself.

Q. How much time did you spend reviewing the complaint before you signed this document?

A. I don't know. I read it over numerous times, had several discussions with my attorney about it. I don't -- I didn't really time myself, to be honest with you.

Q. And all of that was done before you signed this document?

A. Yes.

Q. Now, paragraph 9 says that IBEW Local 98 will not accept any payment for serving as class representative beyond certain things, including lost wages.

Do you see that?

TODD NEILSON

A. I do.

Q. Does the Fund pay any wages to any of its trustees?

A. No.

Q. Does the Fund pay any wages to anybody?

A. No.

MR. SCHWARTZ: All right. Chassity, can you bring that down, and please bring up Tab 13, which was previously marked as Exhibit 7.

MS. POSNER: Jed, we've been going over an hour now. Do you want to take a break or break for lunch?

I'm not sure how the witness is doing either.

MR. SCHWARTZ: That's totally up to the witness.

THE WITNESS: I'm fine to keep going. Maybe let's take 5 minute, 10 minutes? It's up to you guys, if you want to take lunch, go ahead. But if not, just 5 or 10 minutes to just wash face, use the restroom and regroup and get this done. You know, this

1 TODD NEILSON

2 way we're not going into the wee hours of
3 the evening.

4 MR. SCHWARTZ: You know, let's go off
5 the record.

6 VIDEOGRAPHER: We're going off the
7 record at 12:19 p.m.

8 (Luncheon recess.)

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TODD NEILSON

A F T E R N O O N S E S S I O N

VIDEOGRAPHER: We're back on the
record at 12:50 p.m.

BY MR. SCHWARTZ:

Q. Mr. Neilson, we've put on the screen
before you a document that's been previously
marked as Exhibit 7.

(Exhibit 7, document, was previously
marked for identification and shown at this
time.)

MR. SCHWARTZ: And, Chassity, if you
could give the witness and myself control,
I'd appreciate it.

BY MR. SCHWARTZ:

Q. Mr. Neilson, you should have control
of the document.

Take whatever time you need, but
please take a look through this and let me know if
you've seen this before.

A. Yes, I've seen this.

Q. Okay.

MR. SCHWARTZ: I think we're getting
some feedback from someone, so if you'd go
on mute, I'd appreciate it.

TODD NEILSON

Q. Now, you've turned to page 2 of the document. I wanted to ask you a question.

Do you see the first paragraph says, "I, Brian Burrows, President at IBEW Local 98"?

A. I do see that.

Q. And IBEW Local 98 is in the paragraph before defined as the Pension Fund.

Do you see that?

A. It's in the parentheses here, yeah, I see that.

Q. So I was confused before, but is it -- is it incorrect to say that Mr. Burrows is the president of the Pension Fund?

A. He is the president of the Union.

Q. Okay. He's -- just to confirm, he's the president of the Union and cochairman of the Fund, correct?

A. But as -- as president of the Union, yes, that is correct, yeah.

Q. Okay. And now, if you could turn to page 4 of this document, do you see it's labeled "Schedule A"?

A. Yeah, I did something -- I don't know, something going on here. Here we are. Oh.

TODD NEILSON

All right. So what am I looking for now? I'm sorry.

Q. Page 4 of this document, Exhibit 7, which is labeled "Schedule A"?

A. Yes.

Q. Do you recognize Schedule A?

A. I do.

Q. And what is it?

A. That's just a synopsis of the purchases made and the prices that we bought at different times and sold at different times of the holdings that LSV had done for us. It's a synopsis of the shares that we bought and sold throughout the course of this case.

Q. And these are shares of SCANA, correct?

A. Correct.

Q. And is it your understanding that this document reflects all of the purchases and sales of SCANA stock on behalf of the Fund from July of 2015 through April of 2017?

A. Yeah, I believe that to be the case.

Q. Okay. How did the Fund decide when to purchase or sell the shares of SCANA stock?

TODD NEILSON

A. The Fund didn't decide. We have investment managers that make those decisions.

Q. And with respect to the SCANA stock, who or what was the investment manager?

A. That would be LSV.

Q. And does LSV have complete discretion as to which stocks to purchase and sell?

A. LSV has a pool of money that they're allowed to invest on our behalf within certain parameters of what they're allowed to invest in based on the rules and the regulations of the Fund.

Q. And so within those parameters that you mentioned, does LSV then have the total discretion as to which stocks to purchase?

A. Yes.

Q. And does it -- does LSV have -- withdrawn.

Again, within those parameters, does LSV have total discretion as to when to make a purchase or sale of a particular stock?

A. Yes.

Q. And, again, within the parameters that you mentioned, does LSV have total discretion as

TODD NEILSON

to how much of a particular stock to purchase or sell?

A. Yes.

Q. Okay. Other than setting the parameters for the investments in which LSV is authorized to make an investment, did the Fund have any role in determining to make the purchases or sales that are listed on Schedule A, Exhibit 7?

A. No, we did not.

Q. Did anyone at the Fund talk to LSV in connection with the trades that are listed here on Schedule A?

A. Not to my knowledge. That's not something typically that we do.

Q. Since the commencement of this case has the Fund had any discussion with LSV about the Fund's investment in SCANA?

A. No, not to my knowledge.

Q. Does the Fund receive periodic reports from LSV as to the Fund's investments?

A. Yes.

Q. And does the Fund periodically have discussions with LSV as to its investments?

A. No. Most of those discussions are

TODD NEILSON

handled via our investment consultants.

We have a consultant that deals directly with the asset managers, so we don't have multiple people contacting the Fund administrators.

We have -- our investment consultant does all of the communication to the individual investors, and he, in turn, reports back to the trustees on a quarterly basis at our quarterly meetings.

Q. Does the investment consultant speak with the Fund's asset managers, like LSV?

A. I don't know. That would be a question for the investment consultant.

I would assume so.

Q. And who is the investment consultant?

A. Michael Joyce.

Q. Does he work for a company or is he on his own?

A. He works for Marco.

Q. How do you spell that?

A. M-A-R-C-O.

Q. Is Mr. Joyce's consulting arrangement with the Fund documented in any way, like through

TODD NEILSON

an agreement?

A. I think, yeah, we have a contract with him, and it's reviewed periodically based on investment performance, whether or not he's retained or whether or not we're in the market for someone else based on performance.

Q. And is it your understanding that Mr. Joyce may have had conversations with LSV about the Fund's investments during the class period?

A. I don't know.

I think my understanding would be just based on the overall performance, not based on the individual -- each individual investment. I don't know that there's enough time in the day for all of that.

Q. Did the Fund have any conversations with LSV about its investments in SCANA stock at any time?

A. Not to my knowledge.

Q. Do you know why the Fund started investing in SCANA in July 2015?

A. That would be a question for LSV. We don't review their investments. They make the

TODD NEILSON

investments. They're the investment professionals.

So we -- we rely on their judgment as far as what's investable and what's not for the benefit of our members. It's based on return -- rate of return, risk, and everything else is all factored.

Q. Did the Fund have any discussion with LSV about investing in electric or natural gas utility companies?

A. Not to my knowledge, no. We don't discuss individual investments. We leave it up to the professionals.

Q. And I'm just trying to do this in as efficient a way as possible.

MR. SCHWARTZ: We lost the witness.

MS. POSNER: Todd, are you still there?

THE WITNESS: I lost you there for a second. Here we go. Sorry about that.

Q. So I'm going to try to do this in as efficient a way as possible. So I'm going to ask a broad question. If you need me to break it into pieces, let me know.

TODD NEILSON

But my question is: With respect to any of the purchase and sales listed on Schedule A, did the Fund have any communication, whether written or otherwise, with LSV as to the reason for the purchase or sale?

A. Not to my knowledge, no.

Q. And you said not to your knowledge, but I just want to make sure you're not limiting it just to your knowledge personally.

You're testifying as the representative of the Fund, right?

A. I have no knowledge of them -- anybody being in contact with LSV regarding these transactions. Nothing has been brought to my attention as such.

So I guess the answer to your question is "no."

MR. SCHWARTZ: Chassity, we can take that document down.

Chassity, can you bring up Tab 15, please.

(Exhibit 17, document, Bates stamped PLTF-LOCAL98-0000037, was marked for identification at this time.)

TODD NEILSON

MR. SCHWARTZ: This is a document -- multipage document that we've marked as Exhibit 17. It begins at Bates No. PLTF-LOCAL98-0000037.

Take a look, and my first question is: Have you seen this document before?

A. It's blank on my screen.

Q. Okay.

MR. SCHWARTZ: Give it a minute to reload, otherwise you might have to take it done and reload it.

Q. Can you see it now?

A. No, blank screen.

MR. SCHWARTZ: Chassity, can you take the document down and try to reload it?

Thank you.

THE WITNESS: I see it now.

Q. Okay. Now, to refresh you, my question was: Have you seen this document before?

A. Yeah, that's just a fee schedule and an agreement with LSV, it looks like.

Q. And is it your understanding that this forms part of the agreement that governs the purchase of the SCANA stock that are at issue in

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this case?

A. No. This is just my understanding that this is just a fee schedule for anything that they -- any -- anything they do with us, how their fee structure is.

Q. Okay. Who signed this on behalf of the Fund?

A. I don't know. I can't see page 2 or 3. I can only see page 1.

Q. Okay. Can you see page 2 now?

A. No. It's blank.

Q. All right. Do you know someone named Donald Reis, R-E-I-S?

A. Do I know him?

I know of him, yes. I know of him. He's a former trustee -- former management trustee, no longer sits on the Fund. He's retired now.

Q. Okay. So Mr. Reis was a management trustee of the Fund.

Do you recall when?

A. He was on there when I first got on. He's been off for a few years now.

Q. Okay.

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A. At least two or three years he's been gone, I believe. Don't quote me on that, but at least a couple of years he's been retired.

Q. Okay.

MR. SCHWARTZ: We can take that document down.

And then can you bring up Tab 16, please.

(Exhibit 18, PNC statement, Bates stamped PLTF-LOCAL98-0000001, was marked for identification at this time.)

MR. SCHWARTZ: We've marked as Exhibit 18, a multipage document beginning at Bates No. PLTF-LOCAL98-0000001.

BY MR. SCHWARTZ:

Q. Mr. Neilson, do you see that document?

A. I see Exhibit 18, but there's no other -- I can't see anything else other than a blank page.

I see the Exhibit 18 in the bottom right-hand corner, I don't see anything else there.

MR. SCHWARTZ: Okay.

A. And as I scroll through, just more

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blanks.

Oh, could we take that down -- there.
I tried to make it a little bit bigger and it's
not -- it's all messed up again. A blank screen.

MR. SCHWARTZ: Okay. Chassity, can
you take that down and try bringing it back
up again?

THE WITNESS: There we go. Okay.

MR. SCHWARTZ: Okay.

Q. Mr. Neilson, do you know what this
document is?

A. Yeah, it's a PNC statement.

Q. And what service does PNC serve or
provide to the Fund?

A. It's our bank account. They do a lot
of -- they did a lot of -- they're our main bank
account, the bank that we deal with with all our
funds.

Q. And do you -- do you know whether PNC
is the custodian for the Fund's securities?

MS. POSNER: Objection.

A. I'm not a hundred percent certain of
that. I believe they -- I believe they disburse
all the money as -- all the funds are given to PNC

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to disburse, I believe, and then they get something accordingly, they're able to see it.

Q. So I'm turning to page 3 of this document.

Are you at page 3?

A. Blank.

Q. All right. Did it show up?

A. No.

Q. Okay.

MR. SCHWARTZ: Chassity, are you able to share your screen, or just this document?

A. I can see it now.

Q. Okay.

MR. SCHWARTZ: Chassity, can you go to page 3?

Q. Mr. Neilson, can you read that?

A. Yes.

Q. And you see it says, "Corporate Stock - Common," up at the top?

A. Yes.

Q. And then there's a number of redactions, but the unredacted portion refers to SCANA Corp.

Do you see that?

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A. Okay. Yeah.

Q. Do you know why PNC is providing the Fund with a document that lists holdings in common stock?

MS. POSNER: Objection.

I don't understand that question.

A. Now, I don't -- I don't understand it either.

What -- can you rephrase that in some other way?

Q. Well, so you said PNC -- I thought you said it was the bank account for the Fund. Is that right?

A. I said -- I said -- I said, most of our accounts are with PNC, is what I said, I believe.

Q. Would that include accounts that hold securities?

A. I don't -- I don't know the answer to that question.

We have the financial professionals that oversee all that stuff, as well as -- as well as Frank Vaccaro, our Fund administrator, they take care of all the -- putting together the

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paperwork and presenting it to the trustees.

We don't look at every individual bank statement, holding statement. They memorialize all that stuff and put it together for us. We don't do the day-to-day stuff with -- as it applies to the Fund.

Q. Have you ever seen a statement from PNC with respect to any of the Fund's accounts?

A. Only as it applies to this case.

Q. Okay. So you had never seen this document before you were involved in this case?

A. No, I have not.

Q. And do you know why the PNC is providing this document to the Fund?

MS. POSNER: Objection.

A. No. I think you would have to ask PNC that.

MS. POSNER: Sorry.

Objection, assumes facts not in evidence.

Q. Did this document come from the Fund's files?

A. Yes.

Q. Do you know how the Fund received this

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document?

A. How they received it? Yeah.

Tara Chupka, the legal counsel for the Fund, got everything related to the Fund, anything that had came up under SCANA, to put together as part of the discovery for this case, submitted it so that that way anything that came up, SCANA or its ticker symbol, put into the file as part of this case and sent it on as part of the discovery for this litigation.

Q. Okay. There may be some confusion.

In order for Ms. Chupka to have done that, this document would have had to have been in the Fund's files, correct?

MS. POSNER: Objection, assumes facts not in evidence.

A. Yeah, that -- it must have came up through her fact-finding mission with everything that came about.

It would be something you would have to ask her. I can't speak for her other than all these documents were put together by her, and how she came about getting them, it's -- I can't answer to that firsthand, only that she did

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receive them and shared them with everybody as part of this case.

MS. POSNER: Jed, do you want to go off the record for one minute?

MR. SCHWARTZ: Sure.

VIDEOGRAPHER: We're going off the record at 1:17 p.m.

(Recess.)

VIDEOGRAPHER: We're back on the record at 1:18 p.m.

MR. SCHWARTZ: Can we stipulate that this document, which is Exhibit -- Chassity, what exhibit is this? Eighteen?

Can we stipulate that this document, Exhibit 18, is a record of the Fund and that it was accessible to the fund at or about the time that it was created?

MS. POSNER: So stipulated.

MR. SCHWARTZ: Okay. Chassity, I think we're done with that document.

BY MR. SCHWARTZ:

Q. What is the Fund's understanding of what SCANA was during the class period?

A. I'm not sure I understand the

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question.

Q. What did -- did the Fund have any understanding of what the company SCANA did during the class period?

A. Again, prior to the -- we didn't know we were investing in SCANA per se.

You had LSV, who had a pool of money at the time, that was just doing investments. We weren't -- we were not up to speed as far as every individual investment, every individual transaction.

We just rate our investment managers based on their overall performance, and LSV has been a well-performing investment manager for us for a long, long time. What holdings they have from time to time to us is irrelevant.

Usually, the bottom line is that they have a good track record as far as what they do and as far as based on the rate of returns that they get for our folks.

Q. Did anyone at the Fund have any discussions with SCANA personnel during the class period?

A. No.

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Q. Did anyone at the Fund review any analyst reports related to SCANA securities?

A. No.

Q. Did anyone at the Fund -- withdrawn. Was anyone at the Fund aware during the class period that SCANA was developing a nuclear project?

A. No. Not to my knowledge, no.

Q. Has anyone at the Fund ever spoken with someone at Deloitte & Touche or Deloitte LLP relating to SCANA?

A. Not to my knowledge, no.

Q. You understand that in approximately January of 2020, the Fund moved to be appointed as lead plaintiff in this case, right?

A. Yes.

Q. Did the Fund review any of the filings made in connection with that request before they were filed?

A. Yes, I believe they did through our -- Fund counsel did.

Q. Why didn't the Fund disclose in those filings that Mr. Burrows had been indicted?

MS. POSNER: Objection, beyond the

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scope of the 30(b)(6) and part of a pending motion for protective order.

A. I don't think it has any relevancy to us filing the case. It's an allegation at this point. It has nothing to do with this. It has nothing to do with the Fund.

Q. So just so I understand, your testimony is that the Fund considered the issue at the time and decided that it did not need to be disclosed?

MS. POSNER: Objection, misstates his testimony.

A. I definitely didn't say that. I didn't say anything of the sort.

Q. Okay. So --

A. It has nothing to do with the Pension Fund. The Pension Fund is something that's separate from the case that you're speaking of.

Q. So I'm asking, as a representative here of the Fund, why didn't the Fund disclose in those lead plaintiff filings that Mr. Burrows had been indicted?

MS. POSNER: Same objections, and asked and answered.

TODD NEILSON

1
2 A. As previously stated when you brought
3 it up earlier, that when the indictment came down,
4 the attorneys for the Fund let everybody on the
5 Fund know what was going on and assured us that
6 nothing -- the Fund was not in jeopardy, the Fund
7 was not under investigation at any way, shape, or
8 time, so thereafter, they didn't need to worry
9 about anything as it applies to the Fund and the
10 business that the funds were doing as it applies
11 to the 98 Pension Trust Fund.

12 Q. And so what I want to know is: Is
13 that the decision that the Fund made in connection
14 with the filings as to why this issue did not need
15 to be disclosed?

16 MS. POSNER: Same objections, and
17 also, I don't understand the question.

18 A. Based on what we handled, we didn't
19 see any reason to handle anything and change the
20 way we do business as far as the Fund is concerned
21 based on the advice of our attorneys.

22 Q. When did you receive that advice that
23 you're referring to?

24 A. I don't recall exactly when, but it
25 was probably when the indictments came down in the

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very beginning, two years back.

Q. And that was approximately January of 2019, right?

A. I don't know. I don't know the details of when the indictments came down, so I'd be -- I'd be doing a disservice if I threw that date out.

I'm not sure when -- when all the allegations became public and the indictments came down, the next trust meeting that we had, we were advised where we stood as a Fund and to make sure that our fiduciary responsibility was to the members and to the Fund, to make sure that we don't put the Fund or its investments at risk in any way, shape, or form.

Q. And then, in connection with the lead plaintiff process, did the Fund actually make a consideration of whether the indictment needed to be disclosed or is it something that was not considered?

MS. POSNER: Objection, asks for attorney-client privileged communication and beyond the scope of the 30(b)(6) and pending the motion for a protective order.

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MR. SCHWARTZ: Well, you and I disagree.

Are you instructing the witness not to answer?

MS. POSNER: If you can answer that without disclosing attorney-client privileged communications, I'll allow you to answer.

A. I don't believe I can at this time.

Q. You mean you're not able to answer that without disclosing attorney-client communication?

A. That is correct.

MR. SCHWARTZ: Chassity, can we bring up Tab 12?

(Exhibit 19, Amended and Restated Agreement and Declaration of Trust, Bates stamped PLTF-LOCAL98-0000049, was marked for identification at this time.)

BY MR. SCHWARTZ:

Q. Do you have a document in front of you that's titled "Amended and Restated -- Restated Agreement and Declaration of Trust"?

A. No, I have another blank document.

1 TODD NEILSON

2 MR. SCHWARTZ: Okay.

3 All right. Let's go off the record.

4 VIDEOGRAPHER: We're going off the
5 record at 1:30 p.m.

6 (Recess.)

7 VIDEOGRAPHER: We are back on the
8 record at 1:32 p.m.

9 MR. SCHWARTZ: Okay.

10 BY MR. SCHWARTZ:

11 Q. Mr. Neilson, you have before you a
12 document that's been marked as Exhibit 19, and
13 it's a 56-page document that begins with Bates
14 No. PLTF-LOCAL-98, ending in 49.

15 Do you see that?

16 A. I do.

17 Q. Have you seen this document before?

18 A. Way back, yes, when I became -- first
19 became a trustee on the Fund.

20 Q. And what is this?

21 A. That's a copy of -- an old copy of our
22 Pension Trust document.

23 Q. And is this the most recent version of
24 the Pension Trust document?

25 A. I'm not sure. There have been updates

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since then. I don't -- I can't honestly say.

That's from 1975, according to that.

I know it's been amended since then. I don't know if all the amendments are included in this, so ...

Q. I don't believe that they're -- that they are.

Your understanding -- your best understanding is that there have been amendments to this document since 1975?

A. I wasn't on there in '75, but I know there's been little rules changes. I'd be remiss to say what's been changed, if anything.

I'm sure it's been updated in some way, shape, or form.

Q. Okay. Yeah, I'm going to go to page 6.

A. Okay.

Q. And do you see there, there's a section -- I'm go that blow it up here -- that 3.1A that starts at the bottom?

And it says, "The Pension Fund shall jointly be administered," and then it continues, and I'll keep reading, "by six trustees, three of whom shall be appointed by the president of the

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Union and shall act as employee trustees, and three of whom shall be appointed by the association and shall act as employer trustees."

Do you see that?

A. Okay, yeah.

Q. Now, you had testified before that there are actually four and four. Is that correct?

A. We have three Union trustees. There are currently four management trustees.

Q. But there's the ability to have eight in total, correct?

A. I guess, yeah. But I'm not -- I'm not certain of that. I just don't -- there's four trustees right now.

Q. My question is: Given what this says, does that -- does that indicate to you that this document is not the most recent version of the trust agreement?

A. It doesn't indicate to me at all. It just means that this is a document from 1975. I don't know if it's updated since then or not.

Q. Okay.

MR. SCHWARTZ: All right. We can

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bring that down.

And then can we bring up Tab 17,
please?

(Exhibit 20, Form 10-K for South
Carolina Electric & Gas, filed February 24,
2017, was marked for identification at this
time)

MR. SCHWARTZ: This document is titled
"Form 10-K for South Carolina Electric &
Gas," filed February 24, 2017.

BY MR. SCHWARTZ:

Q. Do you see that?

A. Yeah, I see it.

Q. Have you ever seen this document
before?

A. No, I haven't seen this.

Q. Has anyone at the Fund, to your
knowledge, ever seen this document?

A. Not to -- not to my knowledge.

Q. Do you know if anyone at the Fund
reviewed any SEC filings related to SCANA during
the class period?

A. To my knowledge, no.

Q. Do you know if anyone at the Fund

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reviewed any of the financial statements for SCANA at any time?

A. Not to my knowledge.

Q. I'm going to turn to page 15 of this. I'm going to blow it up.

Can you -- can you see page 15?

A. Yes.

Q. Okay. Do you see the --

MS. POSNER: Sorry. Jed, I see 12 up.

A. It says 15 up top, but 12 at the bottom.

Q. Okay. Yes, that's correct. Page 12 of the document, page 15 of the PDF.

A. Okay.

Q. The top paragraph says, "In addition to the project risks."

Do you see that?

A. Yes.

Q. And you see the second paragraph begins "SCE&G."

Do you see that?

A. I do.

Q. It says, "SCE&G and Sandy Cooper, the co-owner of the new units, continue to evaluate

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various actions which might be taken in the event that Toshiba and WEC are unable or unwilling to complete the project. These include completing the work under any of several arrangements with other contractors or, where it determined to be prudent, halting the project, leaving SCE&G to pursue cost recovery under abandonment provisions of the BLRA."

Do you see that?

A. I do.

Q. Was the Fund aware of that statement at any point during the class period?

A. No.

Q. Do you know if LSV was aware that in February of 2017, it was disclosed that the nuclear project might be abandoned?

MS. POSNER: Objection, misstates the document.

A. Yeah, I can't speak for LSV, what they saw and what they know.

Q. Was the Fund aware that in February of 2017, it was disclosed that the nuclear project might be abandoned?

MS. POSNER: Objection, misstates the

TODD NEILSON

document.

A. No, we weren't made aware. No, we weren't made aware of any of that.

Q. Now, do you know if the Fund had the ability to access this document?

A. No, I don't.

Q. Do you know whether this is a publicly filed document?

A. I have no idea, no.

Q. Did the Fund make any attempt to access the public filings of SCANA?

A. No.

Q. You would agree with me that if the Fund had read what I just read to you, it would have become aware no later than February of 2017 that the nuclear projects might be abandoned, right?

MS. POSNER: Objection, misstates the document, and also, as a hypothetical, it's not appropriate for a 30(b)(6).

Q. You can answer.

A. I don't know what to -- I can't speak to that. I don't -- I don't know.

Q. Well, you would agree that it's pretty

TODD NEILSON

clear that this says that the project might be abandoned, right?

MS. POSNER: Objection, misstates the document.

A. According to what you're saying, like I said, I don't know. I've never seen this document before, so I can't speak to it.

Q. Well, you would agree that the document makes it pretty clear that the project might be abandoned?

MS. POSNER: Objection, misstates the document.

A. Yeah, I don't know what the intent of the document is, so I really can't honestly answer that.

MR. SCHWARTZ: Let's go off the record.

VIDEOGRAPHER: We're going off the record at 1:43 p.m.

(Recess.)

VIDEOGRAPHER: We are back on the record at 2:07 p.m.

BY MR. SCHWARTZ:

Q. Mr. Neilson, you should have before

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you the document we were looking at before,
Exhibit 20.

Do you?

A. Yes.

Q. Okay. I'm going to go to page 14 of
the PDF, which is labeled page 11, and I'll zoom
in, if I can.

Are you there?

A. Yes.

Q. And do you see that there's some bold
writing in the middle? It begins, "Recent
announcements"?

A. Yes.

Q. And it says, "Recent announcements by
Toshiba, the parent company of WEC, and the
guarantor of WEC's payment obligations with
respect to the above construction project for new
units at SCE&G's summer station related to
deterioration in its financial position and
liquidity, indicate heightened risk and
substantial uncertainty with respect to the cost,
timing, construction, and/or completion of the new
units."

Do you see that?

TODD NEILSON

A. Yeah, that disclaimer, yes, I see that.

Q. Did anybody at the Fund read that in or around February of 2017?

A. Not to my knowledge, no.

Q. Do you know if anybody at LSV read that in February of 2017?

A. You'd have to ask somebody from LSV. I can't speak for them.

Q. Would you agree with me that anyone who is reading that would understand that as of at least late February 2017, there were substantial risks that the so-called "new units" would not be complete?

A. Substantial?

No. That's a 156-page document. That's one little blurb in a big, giant document, right?

MS. POSNER: Objection, misstates the document as well.

Q. So your testimony is that -- that someone who read that portion of the document would not understand that there were substantial risks that the new units wouldn't be complete?

TODD NEILSON

MS. POSNER: Same objection.

A. I can't speak to this document. I've only read one little blurb. It's 156 pages. There's probably a lot of stuff that's in there that's relevant to this investment.

And this is early. When was this? February 2017? And this time frame goes all the way to December 2017. So a lot could have happened between then and now when this document was put out.

So I don't know what to speak to it or what to assume.

Q. Well, I'm not asking you to assume. But as you sit here and read that sentence, you understand that it says that there's substantial risk to the completion of the new units, right?

MS. POSNER: Objection, misstates the document.

A. Yeah, I don't know. It's a big document.

To that line, maybe, but there's a whole lot of other stuff there that I haven't had the opportunity to read, so it's difficult to say.

Q. Okay.

TODD NEILSON

MR. SCHWARTZ: You could take that document down.

Q. Has the Fund submitted a claim in connection with any other litigation related to SCANA?

A. No, not to my knowledge.

Q. And that would include the securities litigation, correct, in which SCANA itself was named as a defendant?

A. No, not to my knowledge.

Q. So your understanding is that the Fund has not attempted to recover any amounts of its alleged loss from SCANA?

MS. POSNER: Objection, misstates the testimony.

A. Yeah, I don't -- I don't know. I don't know what -- understand the line of questioning because, as far as I know, no, there's no other litigation as it refers to SCANA.

Q. What are the damages that the Fund is claiming in this case?

MS. POSNER: Objection, not in accordance with the schedule.

Q. You can answer.

TODD NEILSON

1
2 A. This isn't just about our loss. This
3 is about the loss of all the stakeholders. Us
4 stepping up as a lead plaintiff, you know, we're
5 willing to share in whatever each stakeholder is
6 entitled to based on what the decision is at the
7 end of the day.

8 We're not looking to get anything
9 individually. This is something that's broad
10 based, and all the stakeholders are entitled to
11 the same amount of equity into the case if, in
12 fact, it's ruled in our favor.

13 Q. Well, has the -- withdrawn.

14 One of the topics that you are
15 prepared to testify about is the Fund's actual or
16 claimed damages in this class action, correct?

17 MS. POSNER: Objection.

18 We have stated objections in response
19 to that topic. So subject to those
20 objections, he is prepared.

21 Q. So you are not prepared to testify as
22 to that topic?

23 A. I'm only prepared to testify as to the
24 stuff that I'm aware of as it applies to this
25 case.

TODD NEILSON

Q. So as the representative of the Fund, are you prepared to testify today as to what the Fund's damages are in this action?

MS. POSNER: Same objection.

A. Yeah, I am not. I don't know. I don't have the monetary number.

Everything's on there. We -- it's not just about us. It's about all the class holders, as I previously stated.

Q. Has the Fund made any attempt to quantify its damages?

A. No, other than the stuff that we submitted into discovery.

Q. And what specifically are you referring to?

A. That schedule that you had that shows our -- the one that you included in your documents earlier.

Q. The one that shows the purchases and sales?

A. Yes.

Q. So other than that, you're not aware of the Fund making any attempt to quantify its damages?

TODD NEILSON

A. Not that I'm -- not that I'm aware of,
no.

MR. SCHWARTZ: Chassity, can you bring
up the interrogatory responses?

I think it's Tab 14.

(Exhibit 21, Plaintiffs' Responses and
Objections to Defendants' First Set of
Interrogatories, was marked for
identification at this time.)

MR. SCHWARTZ: Exhibit 21 is
Plaintiffs' Responses and Objections to
Defendants' First Set of Interrogatories.

BY MR. SCHWARTZ:

Q. Have you seen this before?

A. Yes.

Q. When did you see it?

A. When I went through it with counsel.

Q. And did you review this to make sure
that everything in here was accurate?

A. I read through it. It was done
previously. Counsel went through it ahead of time
making sure everything was accurate.

Q. And do you believe that all of the --
do you -- as the representative of the Fund, do

TODD NEILSON

you believe that all of the responses contained in this document are accurate as of today?

A. Yes.

Q. Is there anything in here that you would change?

A. Without going through it and reading through the entire document, no.

And like I said, as of right now, I say no, but ...

Q. Well, take whatever time you need. I'd like to know if there's anything in here that you would change as you sit here today.

MS. POSNER: Absent communications with counsel, you want him to sit here and read a 20-something page document?

MR. SCHWARTZ: It's significantly shorter than that.

He's the one who qualified his response. So, yeah, he can read this and tell me if there is anything that would change.

A. Okay. Good.

No, I don't think I need to change anything. I think it's great.

1 TODD NEILSON

2 Thanks.

3 Q. Okay. Why did Ms. Chupka sign this?

4 A. Because she prepared everything,
5 prepared all the documents in order to file and
6 reviewed it with counsel.

7 Q. Is Ms. Chupka -- is she employed by
8 the Fund?

9 A. No, she's not employed by the Fund.
10 She's not paid by the Fund. She's an attorney for
11 the Fund.

12 Q. Does she have some kind of an
13 engagement letter with the Fund?

14 A. Not to my knowledge, no.
15 She's in-house counsel.

16 Q. For the -- for the Union, correct?

17 A. Correct.

18 MS. POSNER: Objection.

19 Q. Does Ms. Chupka hold any position with
20 the Fund?

21 MS. POSNER: Objection.

22 A. Advisory counsel.

23 Q. Well, what does that mean? Is she --
24 does she receive any payment?

25 A. No, she doesn't receive payment.

1 TODD NEILSON

2 I said, she's an attorney on the Fund.

3 Q. And what do you mean by that?

4 A. Pretty self-explanatory.

5 Q. Well, she doesn't work for the Fund,
6 right?

7 A. No, she doesn't work for the Fund.
8 No.

9 Q. And she doesn't get paid by the Fund?

10 A. Nobody gets paid by the Fund. There's
11 no employees.

12 You asked that the question earlier.

13 Q. And she doesn't have an engagement
14 letter with the Fund?

15 A. No.

16 Q. So what do you -- how do you
17 understand that she is the lawyer for the Fund?

18 A. She's an adviser -- a legal adviser to
19 the Fund.

20 Not for the Fund, to the Fund.

21 Q. Mr. Neilson, you understand that there
22 is a pending motion for a protective order that
23 relates to the scope of the testimony that has
24 been noticed for -- for the Fund, correct?

25 A. I don't understand your question, no.

TODD NEILSON

Q. Do you understand that -- well, do you understand that there is a pending motion for a protective order that would -- that relates to certain of the topics that we looked at in the first exhibit?

A. Yes.

Q. Are you available for -- to sit for another deposition before October 1st depending on the outcome of that motion?

MS. POSNER: Objection.

A. I'll do whatever I have to do. You know, I'm here to represent the Fund and make sure that I do my fiduciary responsibility to the people of the asset class and my members.

So, yeah, whatever we've got to do.

Q. Okay. Mr. Neilson, aside from the -- the indictment and the labor complaint, are you aware of any trustee of the Fund being named in a criminal action or under criminal investigation?

MS. POSNER: Objection.

It's subject to the motion for protective order.

MR. SCHWARTZ: All right. So you're instructing him not to answer?

TODD NEILSON

MS. POSNER: Yes, he's not answering questions regarding the subject of the protective order, nor has he prepared for that question.

Q. Mr. Neilson, you're following your counsel's instruction?

A. Of course, I am.

MR. SCHWARTZ: Then I have nothing further, obviously reserving rights depending on what happens with the pending motion.

MS. POSNER: I just have a few short redirect.

EXAMINATION

BY MS. POSNER:

Q. Mr. Neilson, earlier today, Mr. Schwartz was asking you some questions regarding your preparation for today's deposition.

Do you remember that?

A. I do.

Q. And I believe you testified that you spoke to counsel in preparation for the deposition, right?

A. Yes.

TODD NEILSON

Q. And when you were referring to counsel, were you also including Ms. Chupka, the in-house counsel to the Fund, in your response?

A. Yes, I was.

Q. And when you spoke with Ms. Chupka --

MR. SCHWARTZ: Objection to that last question. Misstates the testimony.

MS. POSNER: I wasn't stating any testimony, but okay.

Q. When you spoke with Ms. Chupka, did she tell you whether, prior to you taking over oversight of this case, she reviewed the pleadings -- or what are called "pleadings" or "filings" in this case before they were made?

A. Yes, she did.

Q. And did she confirm whether she reviewed those pleadings or filings for accuracy before they were made?

A. Yes, she did.

Q. And did she confirm whether she ever had comments or questions regarding those filings before they were made?

A. Yes, she did.

Q. Did she also confirm for you whether

TODD NEILSON

Mr. Burrows reviewed the complaints filed in this case?

A. Yes, she did.

Q. And did she confirm for you whether she spoke regularly to me as counsel regarding the litigation?

A. Yes.

Q. And did Ms. Chupka tell you what she did to gather documents in response to defendants' request for documents in this case?

A. Yes, she did.

Q. What did she tell you she did?

A. She told me she went through all the files that we had. She went and did searches through e-mails using keywords with SCANA, the ticker symbol. Anything that came up in any of our documents, e-mails, and what have you, and gathered all that information and put it together and sent it as part of her discovery for the case.

Q. Okay. Earlier today, you also were asked some questions regarding the -- how the Fund has participated in this class action.

Do you remember that?

A. I do.

TODD NEILSON

Q. In your answer, you stated that the Fund moved for a lead plaintiff, correct?

A. Yes.

Q. Has the Fund also reviewed filings before they were made as part of its participation in this class action?

A. Yes, they did.

Q. Did the Fund also provide documents in discovery as part of its participation in this class action?

A. Yes, we did.

Q. Are you also sitting here today for a deposition as part of your participation in this class action?

A. Yes, I am.

Q. And did the Fund, whether that was Mr. Burrows or Ms. Chupka, and now you, regularly have conversations with counsel regarding the litigation to understand what was happening in the case as the case went on?

A. Yes, we have.

Q. And since you've taken over oversight of this case, have you personally been the person responsible for reviewing filings before they are

TODD NEILSON

made?

A. Yes, I am.

Q. And have you been taking on that responsibility since you took over?

A. I have.

Q. And have you regularly spoken to me regarding the case and what is happening in the case?

A. Yes, I have.

Q. You were also asked earlier today some questions regarding Mr. Burrows' role in this litigation since you took over.

Do you remember that?

A. I do.

Q. And has Mr. Burrows been involved in this case in any way since you took over for him?

A. No, not at all.

Q. Will Mr. Burrows have any involvement in this case moving forward?

A. Absolutely not.

Q. Was -- is it your understanding that Mr. Burrows was informed by Ms. Chupka that he would have no role in this case going forward?

A. Yes, he was.

TODD NEILSON

Q. And did he accept that without any issue?

A. Yes.

Q. Did he have any issue with stepping away from the case?

A. No.

Q. Is there any need for a Board of Trustees' vote on anything pertaining to this litigation at any time?

MR. SCHWARTZ: Objection.

A. No, I don't see any reason for that.

Q. Will there at any point be a need for a Board of Trustees' vote on whether to settle this case?

A. No.

Q. Will there be a need for a Board of Trustees' vote on the amount this case should settle for, if there is a settlement to be had?

A. No.

Q. And do you have the full, exclusive authority to act on behalf of the Fund in this action?

A. I do.

Q. Do the Fund's bylaws require any sort

TODD NEILSON

of board resolution or any sort of documentation
for you to have that authority?

A. No, not to my knowledge.

Q. Can you alone, in consultation with
counsel -- and, by "counsel," I mean me, Cohen
Milstein -- decide litigation strategy in this
case on behalf of the Fund?

A. Yes.

Q. And will you exclusively do that
moving forward in this case?

A. I will.

Q. And can you alone, in consultation
with Cohen Milstein, decide whether to settle this
case and for what amount to settle this case on
behalf of the Fund, if appropriate?

A. Yes, I can.

Q. And will you do so?

A. I certainly will.

MS. POSNER: I have no further
questions, pending any redirect.

MR. SCHWARTZ: Yeah, I have a few
questions.

EXAMINATION (continued)

BY MR. SCHWARTZ:

TODD NEILSON

Q. First, in the beginning of Ms. Posner's examination, she referred to Ms. Chupka as the in-house counsel to the Fund, and you agreed with that.

Did you misspeak or is Ms. Chupka, in fact, the in-house counsel to the Fund?

A. Yes.

Q. Yes, you misspoke?

A. No -- yes, she's the in-house counsel to the Fund.

Q. What is your understanding of what it means to be in-house counsel?

A. That she's a lawyer that advises us on things as it applies to the Fund, pretty self-explanatory.

Q. So your understanding is that any lawyer who advises the Fund is in-house counsel?

MS. POSNER: Objection, misstates his testimony.

A. No, but any kind of decisions we make, we like to run it by counsel because they're much more verse in the ways and the laws to make sure we don't make a mistake. So we always run anything by counsel for that reason, to see the

TODD NEILSON

legalities of it.

Q. Now, you were asked a number of questions about conversations you had with Ms. Chupka, right?

A. Yes.

Q. And one of the questions Ms. Posner asked you is whether Ms. Chupka confirmed for you whether she spoke regularly to Ms. Posner as counsel regarding the litigation, and you answered yes.

Do you recall that?

A. Yes.

Q. So tell me everything that Ms. Chupka told you about those conversations with Ms. Posner.

MS. POSNER: Objection.

If you can answer that without getting into attorney-client privileged communication.

THE WITNESS: He knows that.

MR. SCHWARTZ: Whoa, whoa, whoa, whoa, whoa. You were the one who opened the door asking about conversations that you had with this person, so I'm not accepting that

TODD NEILSON

limitation.

MS. POSNER: No, I do not waive attorney-client privilege. He -- I should say, the Fund did not waive attorney-client privilege.

What he was testifying to was that she said she spoke, not the substance of the conversations.

BY MR. SCHWARTZ:

Q. Are you going to refuse to answer that question?

A. On advice of counsel, yes, I am. That's privileged.

Q. Now, Ms. Posner asked you: Will there at any point be a need for a Board of Trustees' vote on whether on settle this case?

And you said, no.

Do you recall that?

A. I do.

Q. What's your basis for that testimony?

A. Basis for that is I have the ability to make that decision for the Fund without having to get the other trustees involved.

Q. And how do you know that?

TODD NEILSON

A. 'Cause that's how it's written in the document.

Q. What document?

A. The rules of the Pension Trust Board.

Q. What rule are you specifically referring to?

A. I don't know -- I don't know the document inside and out, but based on what counsel has told me, I'm well within the parameters of what I'm doing based on the benefit of the Fund, not of myself personally.

I'm acting on behalf of the Fund, not on behalf of myself.

Q. And who's "counsel" in that answer?

A. The attorneys for the Fund.

Q. Who specifically?

A. I don't actually know what you're getting at.

Q. Well, I'm asking for the name of the person that you were just referring to.

A. I just -- just per the rules of what I'm allowed -- I don't understand.

No one person in particular, it's what I'm allowed to do as it's based on a trust

TODD NEILSON

document, what we're allowed to do as far as it goes, what we're -- what's within the parameters of what we're allowed to do.

Q. Right. So in your prior answer, I asked you: When you referred to "counsel," who was that?

And you said, the attorneys for the Fund.

And my question is: Who are you referring to?

A. I guess the -- you have me at bay because you have the luxury of what I said earlier. I don't know what you're talking about, so I'm not looking at what you're looking at, so ...

Q. It's a pretty simple question. You said that somebody --

A. Maybe I'm pretty stupid here, I don't know. You know, you're talking to me. I don't appreciate the way you're speaking here, very, very cocky.

But anyway, moving on.

Q. You said that somebody told you that you were able to function on your own?

TODD NEILSON

A. Maybe I misspoke.

Q. Okay. If you want to change your testimony, that's fine, I just want to make sure I understand.

A. Okay.

Q. Are you testifying that nobody has, in fact, told you that you have the ability to make all the decisions for this litigation?

A. I was advised by Ms. Chupka that I was acting on behalf of the Fund, and based on how that's worked, yes.

Q. And earlier, you were asked the question: Will there at any point be a need for a Board of Trustees' vote on whether to settle this case?

And you said, no.

What is your basis for that testimony?

A. Because prior to going into this, the Fund wasn't getting anything in return.

Any kind of return we're going to get based on the losses we've incurred, I think that the trustees -- my fellow trustees would be quite happy to see that we're getting compensated for the indiscretion that was done by Deloitte.

TODD NEILSON

Any recoup of funds for the members and for the fellow stakeholders is a bonus. It's not costing them anything. So if we can bring back our folks a little bit of return for the money they lost, I think everybody would be quite happy.

It's my fiduciary responsibility by being a trustee on this Fund.

Q. Was your testimony based on your understanding of the trust document?

A. Yes, I guess so.

Q. When is the last time you reviewed the trust document?

A. It's been a while.

Q. Like, how long?

A. Like, I don't know, a while.

Q. More 10 years?

A. Probably when I first got on. It's not something that you -- it's not easy reading, which you well know.

Q. Has anybody told you that there's not going to be a need for a trustees' vote if the case settles?

A. Yeah, that's what I -- that's what

TODD NEILSON

I'm -- it's my understanding, yes.

Q. But what's that understanding based on, just your understanding of the trust document?

A. Yes.

Q. You were also asked: And do you have the full exclusive authority to act on behalf of the Fund in this action?

And you said, I do.

Do you recall that?

A. I do.

Q. And what was the basis for that testimony?

A. I'm not sure I understand the question.

Q. Well, when you said, "I do," what made you agree to that question?

A. I was asked the question, and I answered it.

Q. Right. Why did you answer it?

A. The answer was, yes, that I have the full ability to act on behalf of the Fund.

Q. Right. So what's your basis for your understanding that you have that full ability?

A. Based on my fiduciary responsibility

TODD NEILSON

to the Fund, I have the right to pursue and recoup some of the losses based on the misgivings of Deloitte and the fraud that they committed here.

Q. Has anybody told you that you have the full exclusive authority to act on behalf of the Fund for this action?

A. No. I guess I just assumed we do.

Yes, they did. Of course, they did. That's why we're here.

Q. So who told you that?

A. The legal team that got us involved up to this point.

Q. And they said that you, Mr. Neilson, had the full and exclusive authority to act on behalf of the Fund in this action?

A. Just me as a representative of the fund, yes.

Q. And who specifically told you that?

A. I don't recall.

Q. Was it Ms. Chupka?

A. I don't recall.

Q. Do you recall when you were told that?

A. Once, when I got involved in this case. So it was in the beginning.

TODD NEILSON

When we did the refile with my name on it, yes, in June I believe it was.

Q. Ms. Posner asked you: Do the Fund's bylaws require any sort of board resolution or any sort of documentation for you to have that authority?

And you said, no, not to my knowledge.

Do you recall that?

A. Yes, I do.

Q. And what was the basis for your testimony there?

A. I just said it was not to my knowledge. I had no knowledge of that, so that's the basis of my testimony.

Q. So it could very well be the case that the bylaws do require that, you just don't know one way or the other?

MS. POSNER: Objection, misstates the testimony.

A. Yeah, to my knowledge, we're not in violation of the bylaws based on what the attorneys are telling me.

Q. So who told you that you're not -- that this wasn't required?

TODD NEILSON

A. Nobody told me. I said, based on
counsel's advice, it doesn't appear to be in
violation of any of our rules or bylaws.

(Continued on next page for jurat.)

1
2 MR. SCHWARTZ: All right. Nothing
3 further.

4 MS. POSNER: I have nothing.

5 VIDEOGRAPHER: This marks the end of
6 the deposition.

7 We're going off the record at
8 2:38 p.m.

9 (Whereupon the proceedings were
10 concluded at 2:38 p.m.)

11 oOo

12 I, TODD NEILSON, the witness herein,
13 do hereby certify that the foregoing
14 testimony of the pages of this deposition to
15 be a true and correct transcript, subject to
16 the corrections, if any, shown on the
17 attached page.

18 _____
19 TODD NEILSON

20 Subscribed and sworn to before me this
21 _____ day of _____, _____.
22
23 _____
24
25

1
2 CERTIFICATE

3 I, AMY A. RIVERA, a Certified Shorthand
4 Reporter, Registered Professional Reporter,
5 Certified LiveNote Reporter, and Notary Public of
6 the State of New York, do hereby certify that prior
7 to the commencement of the examination TODD NEILSON,
8 was duly sworn by me to testify the truth, the whole
9 truth and nothing but the truth.

10 I DO FURTHER CERTIFY that the foregoing is
11 a true and accurate transcript of the testimony as
12 taken stenographically by and before me at the time,
13 place and on the date hereinbefore set forth.

14 I DO FURTHER CERTIFY that I am neither a
15 relative nor employee nor attorney nor counsel of
16 any of the parties to this action, and that I am
17 neither a relative nor employee of such attorney or
18 counsel, and that I am not financially interested in
19 the action. Dated: September 14th, 2021

20
21 

22
23 Notary Public of the State of New York
24 My commission expires December 6, 2021
25 License No. XI00939

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Neilson in Support of	
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Supplemental Motion for	
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Class Certification,	
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Appointment of Class	
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Representative, and	
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Appointment of Class	
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Counsel	
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Exhibit 21	Plaintiffs' Responses and Objections to Defendants' First Set of Interrogatories	138

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DESCRIPTION

36 11

Mr. Neilson, what facts have
you testified to that supports
the Fund's opinion that
Deloitte did not do its due
diligence?

79 18

Does the Fund execute an
engagement letter with its
auditor?

ERRATA SHEET

Case Name:

Deposition Date:

Deponent:

Pg.	No.	Now Reads	Should Read	Reason
6	_____	_____	_____	_____
7	_____	_____	_____	_____
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18	_____	_____	_____	_____
19	_____	_____	_____	_____

Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS ____ DAY OF _____, 2021.

(Notary Public) MY COMMISSION EXPIRES: _____